United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7533

United States Court of Appeals
FOR THE SECOND CIRCUIT

TRAVELERS INDEMNITY COMPANY,
Plaintiff-Appellee,

—against—

S. S. POLARLAND, her engines, boilers, etc.,
D/S A/S VESTLAND, RICH. AMLIE & CO. A/S,
& SEVEN SEAS SHIPPING CORP.,
Defendants.

S. S. POLARLAND,
Defendant-Appellee,

—against—

SEVEN SEAS SHIPPING CORP.,
Defendant-Appellant.

APPENDIX

TANNENBAUM DUBIN & ROBINSON
Attorneys for Defendant-Appellant
Seven Seas Shipping Corp.
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212-687-3470

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Attorneys for Defendant-Appellee
S. S. Polarland
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25 Broad Street
New York, New York 10004
212-344-4700

MAR 15 1977

PAGINATION AS IN ORIGINAL COPY

United States Court of Appeals
for the Second Circuit

TRAVELERS INDEMNITY COMPANY,

Plaintiff-Appellee,

v.

S.S. POLARLAND, her engines, boilers, etc., D/S A/S VESTLAND, RICH, AMILE & CO., A/S & SEVEN SEAS SHIPPING CORP.,

Defendants,

S.S. POLARLAND,

Defendant-Appellee

v.

SEVEN SEAS SHIPPING CORP.,

Defendant-Appellant.

No. 76-7533

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Plaintiff Travelers:

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3	Certificate of insurance.	544a
4	Bill of lading no. 3.	546a
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9	Letter, Seven Seas to Nimpex dated June 8, 1971.	549a
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15	Letter, Seven Seas to Great Lakes International Corp. ("Great Lakes"), dated August 17, 1970.	603a
17	Letter, Seven Seaas to Great Lakes, dated May 28, 1970.	604a
18	Dock Receipts.	605a

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23	Seven Seas Holtt Warehousing Agreement	732 a
24	Bills of lading M/V Pengall (signatures only admitted).	733 a
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P	Contracts between Molena Trust, Ferrostaal, and Rich Amlie [redacted].	758a
Q	Great Lakes/Seven Seas Contract.	765 a
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D	Fabrique Amended Letter of Credit	767 a
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N	Polarland's Cleveland cargo manifest.	777a
O	Polarland captain's authorization to World Shipping Inc. to sign bills of lading.	778a
P	Great Lakes invoice 7095.	779a
Q	Great Lakes invoice 34186.	780a
R.	Frachonto~~r~~ Ju~~g~~Wie & Co. invoice to Seven Seas	781a

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S	Seven Seas invoice 70064.	782a
T	Seven Seas invoice 70062.	783a
W	Molena/Amlie Agency Agreement p. 1 (not admitted).	784a
X	Molena/Vestland/Amlie Option Agreement p. 1 (not admitted).	785a

CIVIL DOCKET
UNITED STATES DISTRICT COURT

IN ADMIRALTY

DOCKET SHEET 1a

Jury demand date: **72 CIV. 3779**

C. [illegible] Rev.

JUDGE ^AT WEINFELD

TITLE OF CASE

NIMPEX INTERNATIONAL INC. and

TRAVELERS INDEMNITY COMPANY,

Plaintiff

-against-

S.S. POLARLAND, her engines, boilers, etc., D/S A/S VESTLAND, RICH. AMLIE & CO., A/S, SEVEN SEAS SHIPPING CORP., and FERROSTAHL, "GmbH" (corporate characterization fictitious, defendant intended is explained in Schedule A of the Complaint),

Defendants.

For plaintiff:

Donovan, ~~Donovan~~, Maloof & Walsh + Kennedy
161 William St., NYC 10038 (964-3553)

For defendant: ~~Tannenbaum Dubin & Robinson~~
~~521 Fifth Avenue, NYC~~
~~MU 7 3470~~

Kirlin Campbell and Keating substituted
120 Bdwy, NYC 10005 732-5520 9/20/73
(deft. 7 Seas Shipping Corp.)

Haight, Gardner, Poor and Havens
1 State St. Plaza, NYC 10004 DI-4-6800
(deft. SS Polarland, AS Vestland and Rich Amlie and Co.)

Dougherty, Ryan, Mahoney, Pellegrino & Giuffra (deft. GMBH)
576 5th Ave, NYC

BEST COPY AVAILABLE

STATISTICAL RECORD		COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
S. 5 mailed	x	Clerk	[illegible]	[illegible]	[illegible]	
			[illegible]	[illegible]		[illegible]
6 mailed	√	Marshal				
of Action: Cargo'loss & damage--$35,000		Docket fee				
		Witness fees				
ction arose at:		Depositions				

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72 CIV 3779 Nimpex International Inc. vs SS Polarland, her engine 72 CIV. 377

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JUDGE WEINFE

DATE	PROCEEDINGS	Date Or Judgment
Sep 6-72	Filed Complaint & issued summons	
Sep 14-72	Filed Summons with Marshal's return--Cerved Seven Seas Shipping Corp. on 9-12-72	
Oct 3-72	Filed Order that deft Seven Seas Shipping Corp is granted an additional 30 days in which to file an answer to wit 11-2-72. WEINFELD,J.(mn)	
Nov 6.72	Filed Order. Ordered that seven Seas Shipping Corp. be granted 30 days to file answer, to with 12/2/72. Consented to. Weinfeld J.	
Dec 5.72	Filed Dft. Seven Seas Shipping Corp. ANSWER.	TD&
Sept. 10-73	Filed consent order that the attys. of record for Seven Seas Shipping Corp be changed from Tannenbaum Dubin and Robinson to Kirlin,Campbell and Keating.So ordered, Weinfeld.J.	
Nov.30-73	Filed certificate of mailing.On Nov.27,1973 a copy of the summons and complaint was sent by reg istered mail(#455851) to: Ferrostaal A.G. Hvyssen Alle 24 4300 Essen,Germany Clerk	
[illegible]	PRE-TRIAL CONFERENCE HELD BY Mag. Goettel	
Feb.25-74	Filed deft. Ferrostaal AG affdt. and notice of motion for an order vacating the purported service of the summons and complaint on said deft. and to dismiss the complaint to said deft. ret. on: March 12, 1974.	
Feb.25-74	Filed deft. Ferrostaal AG memorandum of law in support of above motion.	
Feb.25-74	Filed pltfs. notice to examine deft. Seven Seas Shipping Corp. on March 27,1974.	
Mar.1-74	Filed deft. SS Polarland,DS AS Vestland and Rich. amlie and Co.,AS notice to take deposition of deft. Ferrostahl GMBH on April 5,1974.	
Mar.1-74	Filed deft. SS Polarland DS Vestland and Rich. Amlie and Co. notice to take deposition of pltf. on March 26,1974.	
Mar.1-74	Filed defts. SS Polarland DS AS Vestland and Rich amlie and Co. to take deposition of deft. Seven Seas Shiping Corp. on April 4, 1974.	
Mar.1-74	Filed deft. SS Polarland,AS Vestland and Rich Amlie andCo. ANSER to complaint.	HGP&H
Mar.6-74	Filed pltfs. affdt. of Charles C. Goodenough in opposition to deft. Ferrostaal AG's motion to quash service and dismiss.	
Mar.6-74	Filed pltfs. memorandum of law in opposition of deft. Ferrostaal AG's motion to quash service of process upon it and to dismiss the complaint as to it.	
Mar.22-74	Filed deft. Seven Seas Shipping Corp. answer to cross-claims of deft. SS Polarland.	
Mar.27-74	Filed deft. Ferrostaal AG reply affdt. and reply memorandum of law in opposition to pltfs. memorandum of law in oppositionto said defts. motion to quash the service and dismiss the complaint.	
Mar.25-74	Filed memo end. on defts. motion dated Feb.25,1974 vacating said defts. copy of complaint and dismissing the complaint---Pltf. has failed to controvert this denial. Since there is no other apparent connection between deft. and NY,this court does not have jurisdiction over the moving deft. Weinfeld,J. m/n	
Mar.28-74	Filed JUDGMENT--ORDERED that deft. Ferrostahl AG have judment aginst pltf. dismissing the complaint as to it only. Clerk.m/n entered on docket 4/1/74	
Apr.1-74	Pre-trial conference held by Mag. Goettel.	
May 21-74	Filed pltfs. interrog. to deft. AS Vestland.	
May 21-74	Filed pltfs. notice of exam. before trial.	
May 31-74	Filedpltfs. proposed findings of facts & conclusions of law.	
May 31-74	Filed pltfs.trial brief.	

DATE	PROCEEDINGS
Jun-3-74	Filed defts. DS AS Vestland and Rich, Amlie & Co. AS to take deposition upon oral exam. of Great Lakes Intl. Corp. on June 10, 1974.
Jun 7-74	Filed pltfs. memorandum of law in support of its request for an order to show cause why defts. notice of deposition upon oral exam. should not be vacated.
Jun 7-74	Filed pltfs. OSC--re: deposition--(unsigned) with memo end.-- Motion for stay is denied. The depositions is to be taken upon condition that the expenses of the attys. for pltf. and deft. 7 Seas Shipping Corp. for attendance at the deposition are to be pd. by deft. shipowner. So ordered, Weinfeld, J. m/n
Jun 4-74	Filed brief submitted on behalf of defts. DS AS Vestland and Rich. Amlie & Co. AS
Jun 4-74	Filed defts. Vestland and Rich Amlie & Co. proposed findings of facts.
Jun 19-74	Filed stip. and order that the time of deft. to answer pltfs. interrog. is ext. to July 2, 1974. So ordered, Weinfeld, J.
Jun 26-74	Filed memorandum of law in support of the motion to add the Travelers Indemnity Co. as a pltf.
Jun 26-74	Filed pltfs. affdt. and notice of motion for an order permitting the addition of Travelers Indemnity Co. as aparty pltf. ret. on: July 3, 1974.
Jun 26-74	Filed pltfs. affdt. of Robert Rappoli.
Jun 26-74	filed pltfs. affdt. ofGlenn Light.
Jun-17-74	Filed memo endorsed on pltf's motion to add party as pltf. - motion granted subject to the right of all defendants to full discovery on any issue that may be asserted as a result of the addition of Travelers Indemnity Co. as a party plaintiff, etc. - Weinfeld, J. m/n
Jul-18-74	Filed memorandum of defendant Seven Seas Shipping Corp. in opposition to pltf's motion to permit the addition of an additional party pltf.
Jul-18-74	Filed pltf's reply memorandum in support of motion to add additional party pltf.
Jul-18-74	Filed memorandum on behalf of deft. Seven Seas Shopping regarding add. proof submitted by pltf. as to the real party in interest.
Jul-19-74	Filed TRANSCRIPT of record of proceedings dated 6-13-74
Jul 26-74	Filed defts. Vestland and Rich. Amlie & Co. request for admissions under Rule 36 FRCP to pltt.
[illegible]	Filed Transcript of record of proceedings, Dated June [illegible] 74
[illegible]	Filed Transcript of record of proceedings, Dated June 18 74
Aug. 16-74	Filed pltfs. objections to request foradmission under rule 36 FRCP to defts DS AS Vestland and Rich. Amlie andCo. AS.
Aug.28-74	Filed memorandum of law in support of motion to compel pltfs. to answer request for admission under Rule36FRCP, by defts. Vestland and Rich. Amlie & C
Aug.28-74	Filed defts. Vestland and Rich. Amlie & Co. affdt. and notice of motion for an order compelling pltfs. to answer the requests for admission dated July 26, 1974, etc. ret. on: Sept. 10, 1974.
Sep.12-74	Filed memo end. on defts. Vestland And Rich. Amlie and Co. motion dated Aug. 28, 1974 to compell pltfs. to answer request s for admission--- Motion disposed of as indicated upon argument. So ordered, Weinfeld, J. m/
Aug. 29-74	Filed deft. Seven Seas Shipping answer torequest for admissions.

(over)

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DATE	PROCEEDINGS
Sep. 13-74	Filed pltfs. response to defts. request for admissions.
Nov 20-74	Filed pltfs. addtl. trial brief.
Jan. 6-75	Filed defts. DS AS Vestland and Rich. Amlie and Co., AS OSC --- ORDERED that the pltf. and deft. Seven Seas Shipping Co. show cause in Rm. 128 on Jan. 7, 1975 at 2:15pm why the pltf. and deft. 7 Seas Shipping shoul not pay the reasonable expenses of counsel to DS Vestland and Rich Aml and Co. defts. in connection with the attending of the deposition to be taken in Antwerp, Belgium and counsel fees of $500 for each days attendance; ORDERED that personal service be made upon pltfs. atty. and upon deft. 7 Seas Shipping atty. by Jan. 3, 1975 at 5pm. Weinfeld, J.
[illegible]	[illegible]
1-16-75	Filed Transcript of record of proceedings, dated 11-26-74
02-03-75	Filed deft. Seven Seas Shipping Corp. affdvt. requesting that the trial be adjourned to subsequent to February 10th.
05-16-75	Filed deft. (corporate characterization fictious) affdvt. of Harold V. Higham requesting adjournment.
[illegible]-20-75	Filed defts. D/S A/S Vestland & Rich, Amile & Co. affdvt. in support of adjournment
[illegible]-20-75	Filed deft. Seven Seas Shipping Corp. affdvt. requesting to adjourn the next trial dat
07-14-75	Filed defts. A/S Vestland & Rich Amlic & Co. A/S affdvt in re trial date
07-14-75	Filed defts. A/S Vestland et al affdvt. in support of a request that this matter not be scheduled for trial before 7-21-75
9-[illegible]-75	Filed Transcript of record of proceedings, dated June 18, 19, 1974 + Nov 26, [illegible]
09-16-75	Filed stip. and order substituting atty's for for defts d/s/a/s Vestland, Rich. Amlie & Co. A/S --Weinfeld, J.
11-20-75	Filed affdvt. of deft Seven Seas Shipping Corp. in re. to trial date
01-20-76	Filed affdvt. of defts to assist the court in scheduling this matter for trail
02-24-76	Filed pltf amended proposed findings of facr and conclusions of law.
02-24-76	Filed Amended supplemental proposed findings of fact and conclusions of law of deft. Seven Seas Shipping Corp.
06-18-74	Non-Jury trial begun before: Weinfeld, J.
06-18-74	Trial continued and adj sine die
03-01-76	Trial continued
03-02-76	Trial continued and concluded Decision reserved
03-07-76	Filed transcript of record of proceedings dated March 1, 2, 1976.
05-13-76	Filed post trial memorandum of defendants D/S A/S Vestland and SS Polarland.
06-18-76	Filed transcript of record of proceedings dated 6-18-74
06-18-76	Filed transcript of record of proceedings dated 3-1, 2, 76
06-18-76	Filed transcript of record of proceedings dated 11-26-76
06-18-76	Filed transcript of record of proceedings, dated 6-18, 19, 74 & 11-26, 1974
08-17-76	Filed OPINION # 44979 Pltf seeks a suborogee to recover monies paid to an assured for damage to a shipment pf steel, Seven seas, as the carrier of the cargo, is held liable for the damage caused by the improper loading and stowage. The vessel also is liable for the cargo damage and a maritime lien may be enforced against it. ....Festlan is not liable in personam for the damages sustained and is entitled to judgment dismissing the complaint against it. The foregoing shall constitute the Court's findings of fact and conclusions of law. If the parties do not agree as to the amount of counsel fees allowed the vessel, the matter may be noticed for hearing on that issue to be held no later than fifteen days from date. Judgment may be entered accordingly. ---Weinfeld, J. n/n
08-26-76	Filed notice of change of firm name of pltf's attorney.

72 CIV 3779 EW Travelers Indemnity Co. vs. SS Polarland, etc.

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ATE	PROCEEDINGS	Date Order or Judgment Noted
-01-76	Filed stip. and order that the hearing on counsel fees is adj. to 9-17-76 -- Weinfeld, J.	
-13-76	Filed brief submitted on behalf of defts D/S A/S Vestland and Rich. Amlie & Co. A/S	
-13-76	Filed proposed Findings of Fact of defendants Rich. Amlie & Co. A/S and D/S Vestland.	
-13-76	Filed supplemental proposed Findings of Fact and Conslusions of Low of defendants Seven Seas Shipping Corp.	
-20-76	Filed JUDGMENT and order #76,844...that plaintiff recover of defendants' the sum of $27,862.13 plus interest (as indicated) for a total of $11,289.89 up to 8-31,1976 and $4.58 per day thereafter until entry hereof, plus costs in the sum of $1,892.73; ordered that deft. SS Polarland shall recover from Seven Seas Shipping Corp., any maritime lien enforced against the SS Polarland in the amount set forth above; ordered that deft. SS Polarland shall recover from Seven Seas Shipping Corp., the sum of $10,000.00 for reasonable counsel fees. Judgment on consent. -- So ordered - Weinfeld, J. -- Judgment entered - Clerk 9-21-76.	
20-76	Filed defts notice of appeal to the USCA for the 2nd Circuit from Judgment of 9-20-76 m/copies	
15-76	Filed defts supersedeas Bond in the sum of $57,011.35 - National Surety Co	

SUMMONS AND COMPLAINT ~~7a~~ 6a

SUMMONS IN A CIVIL ACTION (Formerly D.C. Form No. [illegible])

E.G. ATTY'S No. 11-28

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

Rec'd 9/12/72

CIVIL ACTION FILE No. 72 Civ. 3779

Judge Weinfeld

NIMPEX INTERNATIONAL INC.,

Plaintiff.

v.

SS POLARLAND, her engines, boilers, etc., D/S A/S VESTLAND, RICH. AMLIE & CO. A/S, SEVEN SEAS SHIPPING CORP. and FERROSTAHL, "GmbH", (corporate characterization fictitious, defendant intended is explained in Schedule A of complaint),

Defendants.

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon Donovan, Donovan, Maloof & Walsh

plaintiff's attorneys, whose address is 161 William Street, New York, New York 10038

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

John Livingston
Clerk of Court.

/s/ B. Edwards
Deputy Clerk.

C.7988

Date: September 8th, 1972.

[Seal of Court]

NOTE.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

~~8a~~ 7a

36-72-141

EG. ATTY'S No

11-

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT
OF NEW YORK

---X

NIMPEX INTERNATIONAL INC.,

Plaintiff,

-against-

SS POLARLAND, her engines, boilers, etc.,
D/S A/S VESTLAND, RICH. AMLIE & CO. A/S,
SEVEN SEAS SHIPPING CORP., and
FERROSTAHL, "GmbH", (corporate characterization fictitious, defendant intended is explained in Schedule A),
Defendants.

---X

Plaintiff, by its attorneys, Donovan, Donovan, Maloof & Walsh, alleges upon information and belief, as follows:

FIRST: All and singular the following premises are true and constitute an admiralty or maritime claim within the meaning of Rule 9 (h) of the Federal Rules of Civil Procedure and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

SECOND: At and during all the times hereinafter mentioned, plaintiff had and now has the legal status and principal office and place of business stated in Schedule A, hereto annexed, and by this reference made a part hereof.

THIRD: At and during all the times hereinafter mentioned, defendants had and now have the legal status and office and place of business stated in Schedule A, and were and now are engaged in business as common carriers of merchandise by water for hire, and owned operated, managed, chartered and/or otherwise controlled the vessel above named as common carriers of merchandise by water for hire.

FOURTH: At and during all the times hereinafter mentioned, the said vessel was and now is a general ship employed in the common carriage of merchandise by water for hire, and now is or will be during the pendency of this action, within this District and within the jurisdiction of this Honorable Court.

FIFTH: On or about the date and at the port of shipment stated in Schedule A, there was shipped by the shipper therein named and delivered to defendants and the said vessel, as common carriers, the shipment described in Schedule A then being in good order and condition, and defendants and the said vessel then and there accepted said shipment so shipped and delivered to them, and in consideration of certain agreed freight charges thereupon paid or agreed to be paid, agreed to transport and carry the said shipment to the port of destination stated in Schedule A, and there deliver the same in like good order and condition as when shipped, delivered to and received by them, to the consignee named in Schedule A.

SIXTH: Thereafter the said vessel arrived at the port of destination, where it and defendants made delivery of the said shipment but not in like good order and condition as when shipped, delivered to and received by them, but on the contrary, seriously injured and impaired in value by reason of the matter and things stated in Schedule A, all in violation of defendants' and the said vessel's obligations and duties as common carriers of merchandise by water for hire.

SEVENTH: Plaintiff was the shipper, consignee or owner of the shipment described in Schedule A and brings this action on its own behalf and as agent and trustee on behalf of and for the interest of all parties who may be or become interested in the said shipment, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

EIGHTH: By reason of the premises, plaintiff has sustained damages, as nearly as the same can now be estimated, no part of which has been paid although duly demanded, in the sum of $35,000.00.

WHEREFORE, plaintiff prays:

1. That process in due form of law may issue against defendants citing them to appear and answer all and singular the matters aforesaid;

2. That if defendants cannot be found within this District, then all their property within this District as shall be described in Schedule A, be attached in the sum of $35,000 $5,000.00 , with interest thereon and costs, the sum sued for in this complaint;

3. That judgment may be entered in favor of plaintiff against defendants for the amount of plaintiff's damages, together with interest and costs and the disbursements of this action;

4. That process in due form of law according to the practice of this Court in causes of admiralty and maritime claims may issue against said vessel, her engines, etc., and that all persons having or claiming any interest therein be cited to appear and answer under oath, all and singular the matters aforesaid, and that this Court will be pleased to pronounce judgment in favor of plaintiff for its damages as aforesaid, with interest, costs and disbursements, and that the said vessel may be condemned and sold to pay therefor, and

5. That this Court will grant to plaintiff such other and further relief as may be just and proper.

DONOVAN, DONOVAN, MALOOF & WALSH
Attorneys for Plaintiff
By: Francis V. Elias
FRANCIS V. ELIAS
Address: 161 William Street
New York, New York 10038

SCHEDULE A

Plaintiff's Legal Status:

Plaintiff, Nimpex International Inc., was and now is a corporation duly organized and existing under and by virtue of the laws of one of the States of the United States, with an office and place of business at 745 Fifth Avenue, New York, New York.

Defendants' Legal Status:

Defendants, D/S A/S Vestland, and Rich. Amlie & Co. A/S, are corporations organized and existing under and by virtue of the laws of the Kingdom of Norway, both having and office and place of business at Torvet 3, Haugesund, Norway.

Defendant, Seven Seas Shipping Corp., was and now is a corporation duly organized and existing under and by virtue of the laws of one of the States of the United States, with an office and place of business at 745 Fifth Avenue, New York, New York.

Defendant, Ferrostahl, "GmbH", the corporate characterization being assumed, the party defendant intended is the company which chartered the SS POLARLAND from its owners, D/S A/S Vestland, and Rich. Amlie & Co. A/S. Defendant, Ferrostahl, "GmbH", is a corporation or other business entity, organized and existing under and by virtue of the laws of the Republic of West Germany, having an office and place of business at Hvyssen Alle 24. 4300 Essen, Germany.

Date of Shipment:	May 12th, 1970.
Port of Shipment:	Cleveland, Ohio.
Port of Destination:	Antwerp, Belgium.
Shipper:	Nimpex International Inc.
Consignee:	Order of Shipper.
Description of Shipment:	Cold rolled coils premier choix qualite commercial material non recuit non hulle.
Nature of Loss:	Damage.
Amount Involved:	$35,000.00.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

FRANCIS V. ELIAS, being duly sworn, deposes and says:

That he is an attorney at law and a member of the firm of Donovan, Donovan, Maloof & Walsh, attorneys for the plaintiff herein;

That he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes them to be true.

The source of his information and the grounds for his belief are communications received from the plaintiff and their agents and an examination of the papers relating to the matter in suit.

The reason this verification is made by deponent and not by plaintiff is that said plaintiffis a corporation.

/s/ Francis V. Elias

FRANCIS V. ELIAS

Sworn to before me this

6th day of September, 1972.

[illegible]
Notary Public, State of New York
No. 30-5634000
Qualified in Nassau County
Commission Expires March 30, 1974

#2

12a

SUMMONS WITH
MARSHAL'S RETURN

SUMMONS IN A CIVIL ACTION

CIV. 1 (2-61)
(Formerly D. C. Form No. 45 Rev. (6-49))

FILED
U.S. DISTRICT COURT
SEP 14 10 26 AM '72
S.D. OF N.Y.

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO.

72 CIV. 3779
JUDGE WEINFELD

NIMPEX INTERNATIONAL INC.,

Plaintiff,

v.

SS POLARLAND, her engines, boilers, etc., D/S A/S VESTLAND, RICH. AMLIE & CO. A/S, SEVEN SEAS SHIPPING CORP., and FERROSTAHL, "GmbH", (corporate characterization fictitious, defendant intended is explained in Schedule A of complaint),

Defendants.

SUMMONS

RECEIVED
U.S. MARSHAL
1972 SEP -6 PM 2:27
SDNY

To the above named Defendants :

You are hereby summoned and required to serve upon Donovan, Donovan, Maloof & Walsh

plaintiff's attorneys, whose address is 161 William Street, New York, New York 10038

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

John Livingston
Clerk of Court.

Deputy Clerk.

Date: September 6th, 1972.

[Seal of Court]

NOTE: This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

F12

13a

U.S. MARSHALS SERVICE
INSTRUCTION ~~AND~~ PROCESS RECORD

INSTRUCTIONS: See "INSTRUCTIO... FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF: Nimpex International Inc.

COURT NUMBER: 72 Civ. 3779

DEFENDANTS: SS POLARLAND, her engines, boilers, etc., et al

TYPE OF WRIT: Summons and Complaint

SERVE: NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN

Seven Seas Shipping Corp.

AT: ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

745 Fifth Avenue, New York, New York

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW

Donovan, Donovan, Maloof & Walsh
161 William Street
New York, New York 10038

Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc. NO. 1 OF TOTAL 1

CHECK IF APPLICABLE

☐ One copy for U.S. Attorney or designee and two copies for Attorney General of the U.S. included.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS

Our File: 35-72-141

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR	TELEPHONE NUMBER	DATE
Francis V. Elias	964-3553	9/6/72

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit [illegible]	DEPOSIT [illegible]	DIST. OF ORIGIN	DISTRICT TO SERVE	LOCATION OF SUB OFFICE OF DIST. TO SERVE
I acknowledge receipt for the total number of writs indicated and for the deposit [illegible]	—	57	57	

SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK: [illegible]

DATE: 9/6/72

☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS" the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above): [illegible] Lovett Secretary

☐ A person of suitable age and discretion then abiding in the defendant's usual place of abode

ADDRESS (Complete only if different than shown above)

FEE (If applicable): $3.00

MILEAGE: $1.32

DATE OF SERVICE: 9/7/72

TIME: 4:10 ~~AM~~ PM

SIGNATURE OF U.S. MARSHAL OR DEPUTY: J. Sabatello

REMARKS

$ 1.50

L. CLERK OF THE COURT

DEFENDANT SEVEN SEAS SHIPPING CORP. ANSWER

NG. ATTY'S No.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -X

NIMPEX INTERNATIONAL INC.,

Plaintiff

A N S W E R

72 CIV.3779

-against-

SS POLARLAND, her engines, boilers, etc.,
D/S A/S VESTLAND, RICH. AMLIE & CO. A/S,
SEVEN SEAS SHIPPING CORP., and
FERROSTAHL, "GmbH", (corporate characterization fictitious, defendant intended is explained in Schedule A of complaint).

Defendants
- -X

Defendant, SEVEN SEAS SHIPPING CORP., by its attorneys, Tannenbaum Dubin & Robinson, for its answer alleges upon information and belief the following:

1. Denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraphs FIRST and SEVENTH of the complaint.

2. Admits that the defendant, SEVEN SEAS SHIPPING CORP. was and now is a corporation duly organized and existing under and by virtue of the laws of one of the states of the United States with an office and place of business at 745 Fifth Avenue, New York, New York and is engaged in business as a carrier of merchandise by water and that the defendant, SEVEN SEAS SHIPPING CORP., chartered the vessel known as SS POLARLAND on or about May 12, 1970; except as is expressly so admitted, denies each and every allegation

in Paragraph THIRD of the complaint as the same may relate to the defendant, SEVEN SEAS SHIPPING CORP.

3. Admits that on or about May 12, 1970 the said vessel was a general ship employed in the common carriage of merchandise by water; except as expressly so admitted, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph FOURTH of the complaint.

4. Admits that on or about May 12, 1970, at Cleveland, Ohio, the plaintiff delivered merchandise to be placed aboard the SS POLARLAND for shipment and agreed to pay freight charges for the transportation of said shipments to its port of destination; except as expressly so admitted denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph FIFTH of the complaint.

5. Admits that the SS POLARLAND arrived at the port of destination where delivery of merchandise was made to plaintiff; except as expressly so admitted, denies each and every allegation contained in Paragraph SIXTH of the complaint.

6. Denies each and every allegation contained in Paragraph EIGHTH of the complaint.

WHEREFORE, defendant, SEVEN SEAS SHIPPING CORP.

demands that the plaintiff's complaint be dismissed in its entirety together with the costs and disbursements of this action.

TANNENBAUM DUBIN & ROBINSON
Attorneys for the defendant
Seven Seas Shipping Corp.

By____________________________
A Member of the Firm
521 Fifth Avenue
New York, New York 10017
687-3470

STATE OF NEW YORK, COUNTY OF **[illegible]**

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that the within has been compare(the undersigned with the original and found to be a true and complete copy.

Dated:

STATE OF NEW YORK, COUNTY OF **ATTORNEY'S AFFIRMATION**

The undersigned, an attorney admitted to practice in the courts of New York State, shows: that deponent is

the attorney(s) of record for
in the within action; that deponent has read the foregoing
and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

STATE OF NEW YORK, COUNTY OF ss.: **INDIVIDUAL VERIFICATION**

, being duly sworn, deposes and says that deponent is the in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me, this day of 19

STATE OF NEW YORK, COUNTY OF ss.: **CORPORATE VERIFICATION**

, being duly sworn, deposes and says that deponent is the of the corporation named in the within action; that deponent has read the foregoing and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.
This verification is made by deponent because
is a corporation. Deponent is an officer thereof, to-wit, its
The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this day of 19

STATE OF NEW YORK, COUNTY OF NEW YORK ss.: **AFFIDAVIT OF SERVICE BY MAIL**

Selma Sachs being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 130 Clarkson Avenue

That on the 1st day of December 1972 deponent served the within ANSWER
upon Donovan, Donovan, Maloof & Walsh attorney(s) for Defendants in this action, at the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States post office department within the State of New York.

Sworn to before me, this 1st day of December 1972 Selma Sachs

Ruth Klansky
RUTH KLANSKY
NOTARY PUBLIC, State of New York
No. [illegible]
Qualified in New York County
Commission Expires March 30, 197[illegible]

STATE OF NEW YORK, COUNTY OF ss.: **AFFIDAVIT OF PERSONAL SERVICE**

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 at No.
deponent served the within
upon
the herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me, this day of 19

NOTICE OF ENTRY

Sir:- Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

TANNENBAUM DUBIN & ROBINSON

Attorneys for

Office and Post Office Address

521 Fifth Avenue

Borough of Manhattan New York City

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at M.

Dated,

Yours, etc.,

TANNENBAUM DUBIN & ROBINSON

Attorneys for

Office and Post Office Address

521 Fifth Avenue

Borough of Manhattan New York City

To

Attorney(s) for

Index No. 72 CIV. 3779 Year 1972

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NIMPEX INTERNATIONAL INC.

Plaintiff

-against-

SS POLARLAND, et. al.

Defendants

ANSWER

TANNENBAUM DUBIN & ROBINSON

Attorneys for Plaintiff

Office and Post Office Address, Telephone

521 Fifth Avenue

Borough of Manhattan New York City

MUrray Hill 7-3470

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

1800-© 1963, JULIUS BLUMBERG, INC., 80 EXCHANGE PLACE, N. Y. 4

FERROSTAAL MOTION TO DISMISS

19a

MEMO ENDORSED

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

--------------------------------------x

NIMPEX INTERNATIONAL INC.,

Plaintiff. :

:

-against-

SS "POLARLAND", her engines, boilers, etc., D/S A/S VESTLAND, RICH. AMLIE & CO. A/S. SEVEN SEAS SHIPPING CORP. and FERROSTAHL, "gmbH", (corporate characterization fictitious. defendant intended is explained in Schedule A),

Defendants.

NOTICE OF MOTION

73 CIV. 3770 (EW)

S I R S :

PLEASE TAKE NOTICE that upon the Summons and Complaint herein, and upon the annexed Affidavits of ERNST WEGER and PETER J. ZAMBITO, sworn to on the 14th day of February, 1974 and on the 22nd day of February, 1974, respectively, the undersigned will move this Court before the Honorable Edward Weinfeld at the United States Court House, Foley Square, New York in Room 102 thereof on the 12th day of March, 1974 at 2:15 P.M., or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 12(b)(5) vacating the purported service of the Summons and Complaint on said defendant, Ferrostaal AG, on the ground that said service of process was insufficient, and for an Order pursuant to Rule 13(a)(2) of the Federal Rules of Civil Procedure dismissing the Complaint as to said defendant on the ground that this Court lacks jurisdiction over the person of said defendant, and for such other and further relief

⑧

as to this Court may seem just and proper.

Dated: New York, N. Y.

February 22, 1974.

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO
& GIUFFRA

Attorneys for Plaintiff

BY: Peter J. Zambito
A Member of the Firm

576 Fifth Avenue
New York, N. Y. 10036
765-7100

TO:

DONOVAN, DONOVAN, MALOOF & WALSH
Attorneys for Plaintiff
161 William Street
New York, N. Y. 10038

21a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------------x

K[illegible] INTERNATIONAL INC.,

Plaintiff, :

-against-

S/S "[illegible]OLARLAND", her engines, boilers, etc., D/S A/S WESTLAND, [illegible] & CO. A/S, SEVEN SEAS SHIPPING CORP. and FERROSTAHL "GmbH", (corporate characterization fictitious, defendant intended is explained in Schedule A).

Defendants.

---------------------------------------x

A F F I D A V I T

([illegible] Civ. 377[illegible])

FEDERAL REPUBLIC OF GERMANY)
CITY OF ESSEN : ss.:
EMBASSY OF THE UNITED STATES)

[illegible], being duly sworn, deposes and says:

1. I am Managing ~~Director~~ ("PROKURIST") of Ferrostaal AG (hereinafter referred to as "Ferrostaal"), one of the corporations referred to in Schedule A annexed to the Complaint and incorrectly named in the Complaint as "Ferrostahl, 'GmbH'". This Affidavit is based upon my own knowledge and upon information which I believe to be true, obtained from the files and/or personnel of Ferrostaal.

Addition D.N. [illegible]

2. This Affidavit is submitted in support of a motion to quash the service of process on Ferrostaal and to dismiss the Complaint as to it on the grounds that (a) Ferrostaal is a corporation organized and existing under the laws of the Federal Republic of Germany and was not and is not subject to

service of process within the Southern District of New York or elsewhere in this action, (b) the Court lacks jurisdiction over Ferrostaal and (c) Ferrostaal has not been properly served with process in this action.

2. Service upon Ferrostaal was attempted by the mailing of a Summons and Complaint to Ferrostaal at Essen, Federal Republic of Germany.

3. At the time the voyage in question was performed, the vessel was operating under a time charter entered into between Melera Trust Incorporated, as bareboat-chartered Owners, and Ferrostaal AG, as time charterers. The said charter, a copy of which is annexed hereto as Exhibit A, was entered into at Stockholm, March 5, 1970. It is noteworthy that hire under the charter was to be paid at Oslo, Norway, and that any disputes under the charter were to be submitted to arbitration at Oslo, Norway. No contacts with New York appear in the said charter.

Ferrostaal, in turn, voyage chartered the "[illegible]" to Seven Seas Shipping Corp. (hereinafter referred to as "Seven Seas") on the GENCON form. Said charter, annexed hereto as Exhibit B, was dated at Stockholm, March 5, 1970. Clause [illegible] thereof reflects that the parties did not even contemplate loading or discharging in New York.

4. As appears from Schedule A of the Complaint, the shipments in question were transported from Cleveland, Ohio to Antwerp, Belgium, and obviously no contact with New York is present.

5. Other facts which demonstrate that Ferrostaal is not, and was not, subject to service of process herein or to the jurisdiction of the Southern District Court are as follows:

(a) Ferrostaal is a corporation organized and existing under the laws of the Federal Republic of Germany, with its operating base, executive and administrative offices located at D-43 Essen, Federal Republic of Germany, Thyssenallee 22-30. It is not registered in the United States, and none of its stockholders, officers or directors are citizens or residents of New York or of the United States.

(b) Ferrostaal owns no vessels which trade to New York or to the United States.

(c) Ferrostaal charters no vessels which [illegible] trade to New York or to the United States.

(d) Ferrostaal has no office or place of business in New York or in the United States and does not lease or own any such offices or any real or personal property in New York or in the United States.

(e) At no time did Ferrostaal, nor does it presently, [illegible] do or solicit business in New York or in the United States.

(f) No contracts with respect to the subject matter of this action were negotiated or entered into or executed in New York or in the United States.

(g) The subject matter of this action did not [illegible] it in any way related to any [illegible] by Ferrostaal in New York.

(h) No person, firm or corporation located in New York is authorized to enter into contracts for the performance of any of Ferrostaal's services in its name or to otherwise bind Ferrostaal to the performance of any services in its name.

BEST COPY AVAILABLE

24a

I am informed that the bills of lading which are the subject of this action were issued by or on behalf of Seven Seas [illegible], although the carriage in question was performed between Cleveland, Ohio and Antwerp, Belgium, the latter are dated at New York. Obviously, this arises from the fact that Seven Seas maintains its offices at 745 Fifth Avenue, New York, N. Y. It is to be noted that the plaintiff also maintains its offices at that address (see Schedule A to the Complaint), and I am informed that the two corporations are related.

I am informed further that the ladings in question incorporate the terms of the charter party entered into between Ferrostaal and Seven Seas (Exhibit B hereto). This was done without the authorization or knowledge of Ferrostaal, and a review of the charter (Exhibit B hereto) will attest that such incorporation was not agreed to or even contemplated by the parties to said charter. This is an intentional interference with Ferrostaal's rights, and it would be manifestly unfair if two related companies, namely, the plaintiff, as shipper, and Seven Seas, as carrier, could use such tactics as a basis for jurisdiction in New York over Ferrostaal, especially when Ferrostaal was not even a party to the bills of lading.

WHEREFORE, I respectfully request that the service of process upon Ferrostaal be quashed and the Complaint dismissed as to it, and that the motion be in all respects granted.

Ernst Weger

ERNST WEGER

Sworn to before me this

4th day of February, 19[illegible].

Notary Public

Urkundenrolle Nr. 25/1974

Ich beglaubige hiermit die vorstehende, vor mir in den Geschäftsräumen der Ferrostaal AG vollzogene Unterschrift des mir von Person bekannten Herrn Prokuristen Ernst [illegible] aus Essen.

Essen, den 14. Februar 1974

Notar

Die Echtheit vorstehender Unterschrift des Notars Henning Schlottmann in Essen und die Echtheit des beigedrückten Dienstsiegels wird hiermit bestätigt. Zugleich wird bescheinigt, daß der Vorgenannte zur Vornahme der Amtshandlung befugt war.

Essen, den 14. Februar 1974

Der Präsident des
Landgerichts
In Vertretung:

(Dr. Horstmann)
Vorsitzender Richter am Landgericht

26a

GOVERNMENT FORM

Approved by the New York Produce E

November 6th, 1913—Amended October 20th, 1921; August 6t

This Charter Party, made and concluded in [illegible] [illegible] 19[illegible] [illegible] Owners of the good [illegible]

[illegible] Steamship / Motorship [illegible]

[illegible] tons gross register, and [illegible] tons net register, have [illegible] hull, machinery and equipment in a thoroughly efficient state, and classed [illegible] of about [illegible] cubic feet bale capacity, [illegible] capacity, cargo and bunkers, including fresh water and stores not exceeding [illegible] on a draft of [illegible] feet [illegible] inches on [illegible] of the capacity of about [illegible] tons of fuel, [illegible] about [illegible] knots on a consumption of about [illegible] tons of [illegible]

[illegible] and [illegible] Terrestaal [illegible]

Witnesseth, That the said Owners agree to let, and the said Charterers [illegible] [illegible] months [illegible] in Charterers option [illegible]

Charterers to have liberty to sublet the vessel for all or any part of the time cov[illegible] [illegible] of this Charter Party.

[illegible] to be placed at the disposal of the Charterers, at [illegible] [illegible] April [illegible] 197[illegible]

in such dock or at such wharf or place (where she may safely lie, always afloat, at [illegible] [illegible] If such dock, wharf or place be not available time to co[illegible] ready to receive cargo with clean swept holds and tight, staunch, strong and in [illegible] donkey boiler with sufficient steam power, or if not equipped with donkey boiler, th[illegible] [illegible] with full complement of officers, seamen, engineers and firemen for a ve[illegible] [illegible] goods in [illegible] excluding [illegible] [illegible] in the carriage of Live Stock that Charterers are to [illegible] all necessary fittings and other requirements to be for account of Charterers [illegible] [illegible] [illegible] and/or Australia, and/or Tasmania, and/or New Zeal[illegible] [illegible] limits excl[illegible] [illegible] or satellites or any other countr[illegible] [illegible] or any other kind of re[illegible]

as the Charterers or their Agents shall direct, on the following conditions:

1. That the Owners shall provide and pay for all provisions, wages and cons[illegible] insurance of the vessel, also for all the cabin, deck, engine room and other necess[illegible] the vessel in a thoroughly efficient state in hull, machinery and equipment for a[illegible]

2. That the Charterers shall provide and pay for all the fuel except as oth[illegible] Consular fees (except those pertaining to the Crew) and all other usual exp[illegible] a port for causes for which vessel is responsible, then all such charges incurred [illegible] illness of the crew to be for Owners account. Fumigations ordered because of [illegible] [illegible] Charterers [illegible] All other fumigations to be for Charterers [illegible] of six months or more.

Charterers are to provide necessary dunnage and shifting boards, also any e[illegible] Owners to allow them the use of any dunnage and shifting boards already aboard [illegible] for dunnage, they [illegible] any damage thereto.

3. [illegible] at the port of [illegible]

[illegible]

[illegible]

4. That the Charterers shall pay for the use and hire of the said Vessel at [illegible]

United States Currency per ton on [illegible]

stores, on [illegible] summer freeboard, per Calendar Month [illegible] and after the same rate for any part of a month; hire to continue until the hour of t[illegible] wear and tear excepted, to the Owners (unless lost) at [illegible]

unless otherwise mutually agreed.

[illegible] notice of vessel's expected date of redelivery, and probable port [illegible]

[illegible] in cash in United States [illegible] part of same the approximate amount of hire, and should same not cover the actua[illegible] [illegible] by Owners, unless bank guarantee or deposit is made by the C[illegible] [illegible] or any breach of this Charter Party, the Owners shall [illegible] [illegible] to any claim they (the Owners) may otherwise have on [illegible] [illegible]

[illegible] ordinary disbursements at any port may be advanced at [illegible] [illegible] such advances shall be deducted from the hire. The Ch[illegible] [illegible]

6. That the cargo or cargoes be laden and/or discharged in any dock [illegible] [illegible], provided the vessel can safely lie always afloat at any time of tide, except a[illegible]

[illegible] That the whole reach of the Vessel's Hold, Decks, and usual places of [illegible] for Supercargo, if carried, shall be at the Charterers' disposal, [illegible] tackle, apparel, furniture, provisions, stores and fuel. [illegible] the [illegible]

[illegible] per day [illegible]

[illegible] That the Captain shall prosecute his voyages with the utmost despatch, [illegible] The Captain (although appointed by the Owners), shall be under the ord[illegible] [illegible] Charterers are to load, stow, and trim the cargo at their expense und[illegible] [illegible] in conformity with Mate's or Tally Clerk's receipts.

[illegible] That if the Charterers shall have reason to be dissatisfied with the co[illegible] [illegible] particulars of the complaint, investigate the same, and, if necessary, [illegible]

[illegible] That the Charterers shall have permission to appoint a Supercargo, w[illegible] [illegible] to be furnished with free accommodation, and [illegible] [illegible] Owners to victual Pilots and Customs Officers, and also, [illegible] Charterers to pay at the current rate per mea[illegible]

[illegible] the Captain from time to time with [illegible] full and correct Log of the voyage or voyages, which are to [illegible] Agents or Supercargo, when required, with a true copy of daily l[illegible]

[illegible] Captain shall use diligence in caring for the ventilation of [illegible]

[illegible]

[illegible] to the Owners [illegible]

[illegible]

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[illegible] vessel [illegible] except a
be [illegible].

7. That the whole reach of the Vessel's Hold, Decks, and usual places of
accommodation for Supercargo, if carried, shall be at the Charterers' disposal,
tackle, apparel, furniture, provisions, stores and fuel. Charterers have the priv
[illegible] per day [illegible]
[illegible] of the carriage of passengers. Charterers [illegible]

8. That the Captain shall prosecute his voyages with the utmost despatch,
[illegible] The Captain (although appointed by the Owners), shall be under the ord
[illegible] Charterers are to load, stow, and trim the cargo at their expense unde
[illegible] in conformity with Mate's or Tally Clerk's receipts.

9. That if the Charterers shall have reason to be dissatisfied with the con
[illegible] of the complaint, investigate the same, and, if necessary, m

10. That the Charterers shall have permission to appoint a Supercargo, wh
[illegible] to be furnished with free accommodation, and s
[illegible] Captain, Officers, and also,
[illegible] Charterers [illegible] rate per mea
[illegible]
[illegible] full and correct Log of the voyage or voyages, which are to
[illegible] or Supercargo, when required, with a true copy of daily L
[illegible]

11. [illegible] Captain shall use diligence in caring for the ventilation of t
[illegible]

[illegible] to the Owners [illegible]

15. That if required by Charterers, time not to commence before [illegible]
[illegible] written notice of readiness [illegible]
[illegible] Charterers [illegible] the Charter at any time not later th

15. That in the event of the loss of time [illegible]
grounding, detention by average accidents to ship or cargo, drydocking for the
preventing the full working of the vessel, the payment of hire shall cease for th
defect in or breakdown of any part of her hull, machinery or equipment, the tim
[illegible], and all extra expenses shall be deducted from the hire. [illegible]

16. That should the Vessel be lost, money paid in advance and not earne
returned to the Charterers at once. The act of God, enemies, fire, restraint of
Rivers, Machinery, Boilers and Steam Navigation, and errors of Navigation th
The vessel shall have the liberty to sail with or without pilots, to tow
purpose of saving life and property.

17. That should any dispute arise between Owners and the Charterers, t
one to be appointed by each of the parties hereto, and the third by the two so
the purpose of enforcing any award, this agreement may be made a rule of the

18. That the Owners shall have a lien upon all cargoes, and all sub-freig
age contributions, and [illegible]
deposit to be returned at once. Charterers will not suffer, nor permit to be cont
might have priority over the title and interest of the owners in the vessel.

19. That all derelicts and salvage shall be for Owners' and Charterers'
Crew's proportion. General Average shall be adjusted, stated and settled, acc
York-Antwerp Rules 1924 at such port or place in the United States as may b
[illegible] to the laws and usages at the port of New York. In such ad
[illegible] money at the rate prevailing on the dates made and allowances
the rate prevailing on the last day of discharge at the port or place of final di
[illegible] and such additional security, as may be required by the carrier, must be
or his agents may deem sufficient as additional security for the contribution o
[illegible], be made by the goods, shippers, consignees or owners of the goods t
[illegible] be payable in United States money and be remitted to the adjuster. W
[illegible] in the name of the adjuster pending settlement of the Ge
United States money.
[illegible]
[illegible] for which, or for the consequence of which
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] to General Average in accordance with the above are to b

20. Fuel used by the vessel while off hire, also for cooking, condensin
cost of [illegible], to be allowed by Owners.

21. [illegible] employed in tropic
[illegible] cleaned and painted [illegible]
[illegible] and payment of the [illegible] suspended until [illegible]
[illegible] Charter. ....
....

22. Owners shall maintain the gear of the ship as fitted, providing
[illegible] If vessel is fitted with derricks cap
[illegible] equipment and gear for heavier lifts shall be for Charterer
[illegible], but any a
Charterers to have the use of any gear on board the vessel.

23. Vessel to work night and day, if required by Charterers, and al
[illegible] day and night,
[illegible] for overtime work done in [illegible]
[illegible] prevent crew from driving winches, shore Winchmen to
[illegible] to winches. Owners to pay for shore engine, or th
[illegible]

24. It is also mutually agreed that this Charter is subject to all the
[illegible] of the United States approved on the 13th day of Fe
[illegible] all cargo shipped under this charter to or from the Unite
[illegible]

[illegible]
[illegible]
[illegible] which shall be deemed to be incorporated herein, and nothin
[illegible] or an increase of any of its responsibil
[illegible] Act to any extent, such term shall be void to th

Both-to-Blame Collis
[illegible] comes into collision with another ship as a result of the n
[illegible], pilot or the servants of the Carrier in the navigation
[illegible] will indemnify the Carrier against all loss or liability to t
[illegible] liability represents loss of, or damage to, or any claim whatsoeve
carrying ship [illegible] to the owners of said goods and set off,
[illegible]

25. The vessel shall not be required to enter any ice bound port, or
drawn by reason of ice, or where there is risk that in the ordinary course o
port or to get out after having completed loading or discharging..

26. Nothing herein stated is to be construed as a demise of the vess
navigation of the vessel, insurance, crew, and all other matters, same as wh

27. A commission of 2½ per cent is payable by the Vessel and Own
[illegible] Rederiagentur AB., Stockh
on hire earned and paid under this Charter, and also upon any continuation

28. [illegible]

By [illegible] authority from

The [illegible] Charter Party in our possession.

BROKERS.

Clauses [illegible], both inclusive, as attached
this Charter Party.

FERROSTAAL

28a

[illegible]

for [illegible]
being [illegible] to charter to.

30. The vessel is registered with [illegible] Veritas.

31. The Owners shall [illegible] Charterers indemnified to the same extent that Owners [illegible] the vessel for their own benefit in the trades in which the vessel is employed by the Charterers, against all such claims and risks as are covered by [illegible] Protection and Indemnity Association, Owners shall extend Charterers the benefit of any other association for defence or other purposes, in which the vessel may be entered, always understood as far as the rules of Owners' P. & I. Club and insurance policies allow. Any extra premium [illegible] to extend to Charterers Owners cover, to be for Charterers' account.

32. If the country of the flag of the vessel becomes involved in a war with any of the major powers, the Owners and/or Charterers shall have the option of cancelling this Charter.

33. If required by Charterers, the Master, the Charterers and/or their [illegible] are hereby authorized by Owners to sign on Master's and/or Owners behalf, Bills of Lading according to Mate's receipts without prejudice to this Charter Party. or Tally clerks

34. Description of Vessel:
[illegible] tons dw [illegible] cbft grain in [illegible] with [illegible]
[illegible] holds/[illegible] hatches, all of following dimensions:
[illegible] (10-1/4")
[illegible]

[illegible] single derrick [illegible] with double cargo runner [illegible] "[illegible]" (coupled derricks);
[illegible]
" " " " " 30'-7"
" " " " " 19'-6"

Frachtcontor Junge & Co.
Shipbroker
2 Hamburg 1, Ballindamm 17
Tel. 32 23 91, Telegr. [illegible], Telex 02161256

37. Inter[illegible] [illegible]ization Safety Clause
[illegible], if necessary, vessel will comply with any safety regula[illegible] requirements in effect at ports of loading and/or dis[illegible], particularly the United States Department of Labour, Safety and Health Regulations set forth in part 3 of Federal Register. Although other provisions of this Time charter make it the responsibility of the Owners, it is agreed that should the vessel not meet the rules and regulations, Owners will make immediately corrective measures and that any stevedores' standby time and expense involved including off-hire will be for the Owners' account. Vessel has valid certificates including cargo gear.

38. On-hire survey to be carried out in Charterers time and for Charterers account, off-hire survey to be carried out in Owners' time and for Owners' account.

39. Crews overtime to include the following services:

1. Raising and lowering derricks in preparation for loading and/or discharging.
2. Opening and closing hatches in preparation for loading and/or discharging, if permitted by local labour regulations.
3. Removing and replacing beams in preparation for loading and/or discharging.
4. Supervision of loading and/or discharging.
5. Maintaining steam while loading and/or discharging and care of winches.
6. Docking and undocking.
7. Bunkering
8. Officers and crew to shape up the vessels: hatch and derricks as much as possible prior to arrival at loading and/or discharging docks or place so as to immediately commence loading and/or discharging operations.

40. In line [illegible] after the words "loss of time" the following wording is to be inserted: "arising or resulting from any strike or work-stoppage by vessel's Master, Officers, or Seamen, whether practical or general, from deficiency or default of men, lockout of men or deficiency of or defect in stores, sickness of men, or accidents to any of the crew.

41. In line [illegible] after the words "from the hire" the following wording is to be inserted: "should the vessel change her intended voyage by reason of any of the aforementioned causes and put into any other ports than those to which she is bound under instructions of Charterers, the hire shall be suspended from the time of such change until the vessel is again in the same position and the voyage resumed therefrom.

42. In line [illegible] after the word "excluding" insert the following "Arms, ammunition, asphalt, pitch, ammonium nitrate, explosives, logs, scrap, salts, acids, unless mutually agreed.

30a

[illegible]

43. Victualling

The Captain is to approve the victualling of authorized persons and proper vouchers signed by recipient of meals are to be submitted to Charterers for settlement. Authorized persons to include Pilots, Customs Officers, and when Authorized by Charterers or their agents, Tally Clerks, Stevedores Foremen.

44. Captain's co-operation with Charterers agents

Captain on behalf of the Charterers to initiate efficient port dispatch of Vessel by co-operation with Charterers agents and in event of delay in port for any reason, lack or ready berth or facilities for maximum efficiency for loading and/or discharging, bunkering, weather, shortage of shore labour, barges, wagons, trucks, railcars causing or threatening to cause delay in loading or discharging, shortage of pilots, towboats, necessity for stevedores overtime to maintain schedule, Captain is to telegraph Charterers immediately to request instructions.

45. Deviation

Should the vessel put back on a voyage by reason of an accident or breakdown, the hire shall be suspended plus value of bunker fuel consumed, from time of her putting back until she is again in the same position or a position equidistant and voyage resumed therefrom. Any deviation of vessel for purposes of crew deficiences or illness and/or vessel's business to be entirely for Owners' account including hire, fuel and port charges incurred.

46. The Charterers and Owners agreed that on delivery and redelivery about 100 tons IFO and about 30 tons diesel oil will be charged at the stipulated bunker prices, viz. US $ 14.00 for IFO and US $ 26.00 for diesel oil, Whilst for the additional 150 tons IFO to comply with the special minimum 250 tons IFO, on delivery.

47. Present War Risk Insurance and Crew War Bonus to be for Owners' account. In the event of an increase in War Risk Insurance premium after delivery for the trade in which the vessel is engaged but based on vessel's present Hull and Machinery valuation of   , to be for Charterers account. Any increase in Crew War Bonus after delivery caused by the trade in which vessel is engaged as recognized by Norwegian Government to be for Charterers' account.

48. Extra insurance for trading in Great Lakes for Charterers' account. Charterers' option trade vessel outside IWL against paying additional premium as may be charged by vessels Underwriters.

31a

[illegible] Owners of the [illegible]

[illegible] and M[illegible]

at New York [illegible] as Charterers

[illegible] shall proceed to [illegible] or so near thereto as she may safely [illegible] shipment of [illegible] to be at Charterers [illegible]

See Clause 1[illegible]

Charterers to provide all [illegible] wood for dunnage and any separation required, the Owners allowing the use of dunnage wood on board if required [illegible] which the Charterers bind themselves to ship, and being so loaded the vessel shall proceed

See Clause 1[illegible]

as ordered on signing Bills of Lading or so near thereto as she may safely get and lie always afloat and there deliver the cargo on being paid freight – on [illegible] intaken quantity – as follows:

See Clause 1[illegible]

2. (4) ~~[illegible]~~ [illegible] ordinary disbursements at port of loading to be advanced by Charterers if required at highest current rate of exchange, subject to two per cent. to cover insurance and other expenses.

See Clause 16

3. (5) ~~[illegible]~~

Time to commence at 1 p.m. if notice of readiness to load is given before noon and at 8 a.m. next working day if notice given during office hours after noon.

The notice to be given to the Shippers, Messrs.

Time lost in waiting for berth to count as loading time.

See Clause 16

4. (6) ~~[illegible]~~ Time to commence at 1 p.m. if notice of readiness to discharge is given before noon, and at 8 a.m. next working day if notice given during office hours after noon.

Time lost in waiting for berth to count as discharging time.

5. (7) ~~[illegible]~~ demurrage at the rate of US $ 3.000.- (Threethousand) per day or pro rata for any part of a day, payable day by day, ~~[illegible]~~

6. (11) ~~[illegible]~~

7. (14) In every case the Charterers shall appoint his own Broker or Agent both at the port of loading and the port of discharge. Owners paying customary Agency fee

8. (15) 3 1/2 % brokerage on the freight earned is due to Frachtkontor Junge & Co and [illegible] Rederiagentur AB for equal division

In case of non-execution at least 1/3 of the brokerage on the estimated amount of freight and dead-freight to be paid by the Owners to the Brokers as indemnity for the latter's expenses and work. In case of more voyages the amount of indemnity to be mutually agreed.

9. Clauses in part B, which constitute a part of this Charter as though fully set forth herein.

Enclosed Clauses 15 - 2[illegible] to be included in this Charter Party.

Hereof two originals

EXHIBIT B

32a

[illegible] March, 1970

[illegible] This [illegible] is valid for following shipments of steel products i.e. coils, [illegible], billets, slabs, ingots, blooms and wire rods, provided [illegible] bundles, measuring max. 45 cbft per ton.

[illegible]:

About [illegible] tons March/early April 1970, whereof about 8/10.000 tons to [illegible] in March 1970.
Charterers have the option to ship further about 50.000 tons from New Orleans May/December 1970.

From Philadelphia or Baltimore:

About [illegible] tons March/June 1970 of which m/s UTVIK shall load one cargo in March.
Charterers have the option to ship further about 100.000 tons July/December 1970.

From Cleveland, Erie, Chicago and Detroit:

About 50/60.000 tons [illegible]/June 1970
Charterers option further use m/s [illegible] and m/s UTVIK /during/ July/October 1970 both inclusive. Such options to be declared 6 weeks in advance.

Destinations:

Antwerp (about 70 % of total quantity)
Bilbao (about 10/20 % of total quantity)
El Ferrol
Barcelona
La Spezia

Shipping dates, quantities and ports within above mentioned agreement to be mutually agreed. Anyhow it is agreed that thecontract is based on full shiploads for each voyage resp. up to Lakes draft for Lake cargoes.

To be included it is understood in affreightment contract in the event Charterers supplying mills, for some reason cannot meet schedules to agreed upon that Nimpex and/or Seven Seas would have the right to book outside cargo in order to eliminate deadfreight, with the same terms and conditions to apply and to mean as though they were Nimpex cargo.

Charterers also have privilege of booking suitable bulk cargo other than steel if cargo not available, always from the same destinations and to same destinations or range at mutually agreed rates but never to exceed fixed rates.

Freight rates:	Philadelphia/Baltimore	New Orleans
Antwerp	$ 7.25	$ 8.25
Bilbao	$ 8.40	$ 9.35
Barcelona	$ 9.40	$ 10.35
La Spezia	$ 10.40	$ 11.35
El Ferrol	$ 8.40	$ 9.35

[illegible]

Freight rates:	Erie	Cleveland	Detroit	Chicago
Antwerp	$ 10.25	$ 10.25	$ 9.35	$ 11.-
Bilbao	$ 11.25	$ 11.25	$ 10.35	$ 12.-
Barcelona	$ 12.25	$ 12.25	$ 11.35	$ 13.-
La Spezia	$ 13.25	$ 13.25	$ 12.35	$ 14.-
El Ferrol	$ 11.25	$ 11.25	$ 10.35	$ 12.-

All rates per long ton basis one loadingport/one dischargingport.
25 Cents extra per long ton for each additional port
Freight to be paid within - days after signing B/L discountless and non-returnable ship and/or cargo lost or not lost.

Loading rates:

Cleveland	3.000.-
Philadelphia/Baltimore	3.000:-
New Orleans	3.000.-
Erie	3.500.-
Chicago	3.000.-
Detroit	4.000.-

Discharging rates:

Antwerp	4.500.-
Bilbao	2.000.-
Barcelona	2.500.-
La Spezia	1.500.-
El Ferrol	2.000.-

The cargo to be loaded, stowed, lashed and discharged by Charterers Stevedores free of expense to the vessel.
Time for loading and discharging to be reversible.

At loading and discharging time to count whether in berth or not 8 am first day after arrival wwhex, working time 8 am Monday through 5 pm. Friday, except ports where normal working hours are noon Saturday.

17. For vessel which has been nominated and accepted Owners to give 7 days notice of loadreadiness to Seven Seas Shipping Corp. New York and also to keep Charterers closely advised of vessel's position. Also to give Agents at loading port 24 hours notice of ETA.

18. Owners to pay despatch at the rate of US $ 2.000.- per day or pro rata for laytime saved in loading and discharging.

19. Vessels tanks tops are suitable for fork lift loading of steel coils.

20. Vessel shall supply full light for night work on deck and in the holds, if required on board.

21. Owners option use gearless tonnage after mutual agreement . However for geared vessels cargo gear and all other equipment shall comply with regulations established under 33 U.S. Code Section 941 and Master shall have in his possession a valid "Certificate of Test and Examination" of cargo gear issued by the National Cargo Bureau or its equivalent.

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BOLAGEN

Owner shall assume any cost, including standby time, resulting from failure to have such certificate or to comply with such regulations.

22. Owner guarantees vessel is not prohibited from trading with the United States by law, order or regulation of the United States Government.

23. Cargo wharfage to be for Charterers' account. Owners paying portdues, bording expenses etc. which are normally paid by vessels. Taxes and tolls on cargo for Charterers account. Taxes and tolls on vessel for Owners account.

24. Dunnage to be for Charterers account. Tardeck material on board not to be used as dunnage.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

---------------------------------------x

NIMPEX INTERNATIONAL INC.,

Plaintiff, :

-against-

SS "POLARLAND", her engines, boilers, etc., M/S VESTLAND, RICH. AMLIE A/S, SEVEN SEAS SHIPPING CO., and FERROSTAAL "GmbH", (corporate characteristics fictitious, defendant intended is explained in Schedule A).

Defendants.

---------------------------------------x

A F F I D A V I T

72 CIV. 3779 (EW)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PETER J. ZAMBITO, being duly sworn, deposes and says:

1. That he is an attorney and member of the firm of DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, attorneys for defendant Ferrostaal AG (sued herein as "Ferrostahl, 'GmbH'" and hereinafter referred to as "Ferrostaal") and is fully familiar with the facts of the matter and with the proceedings heretofore had herein.

2. That he makes this Affidavit in support of said defendant's motion to quash the service of process upon Ferrostaal pursuant to Rule 12(b)(5) F.R.C.P. and to dismiss the Complaint pursuant to Rule 13(a)(2) F.R.C.P. as to it on the grounds set forth in the Affidavit of Mr. Ernst Weger, Managing Director of Ferrostaal, also submitted in support of the motion.

Exhibit A

3. Although the suit herein was commenced on or about September 6, 1972, service of process upon Ferrostaal was not attempted until on or about November 26, 1973.

4. It is clear from a reading of the plaintiff's Complaint that the shipment or shipments in suit (not specifically identified in the Complaint by bill of lading number) were transported from Cleveland, Ohio to Antwerp, Belgium, and that the carriage in question does not concern any port within the State of New York, nor is any contact with the State of New York even alleged.

5. Furthermore, it is clear from a reading of the Complaint that it alleges no facts upon which jurisdiction over Ferrostaal may be based and is deficient on its face. As appears from the Memorandum of Law submitted herewith, the burden is on the plaintiff to establish personal jurisdiction of the Court over the defendants. Accordingly, the Complaint, which fails to even allege facts upon which jurisdiction over Ferrostaal may be based, should be dismissed on that ground alone, although other grounds exist, as a reading of the aforesaid Affidavit of Mr. Ernst Wager attests.

6. The Ernst Affidavit establishes that Ferrostaal is not "doing business" within the jurisdiction of the Southern District Court.

7. The Complaint itself and the Ernst Affidavit establish that Ferrostaal did not "transact any business" in New York out of which the cause of action arose.

8. Deponent has informed plaintiff's counsel of his intention to move the Court to dismiss as to Ferrostaal and has inquired of plaintiff's counsel as to the basis for alleged "long-arm" jurisdiction. Plaintiff's counsel reportedly relies

Exhibit A

upon the fact that the bills of lading, which are dated at New York, purport to incorporate the terms of the charter entered into between Ferrostaal and Seven Seas Shipping Corp. (hereinafter referred to as "Seven Seas"), and that this sole, indirect contact with New York is sufficient to confer jurisdiction over the person of Ferrostaal. A copy of the original of one of the bills of lading in suit, No. 2, is annexed hereto as Exhibit A.

The Ernst Affidavit makes it clear that such incorporation of the charter into the bills of lading was not authorized by Ferrostaal or contemplated or permitted by the charter entered into between the parties (Exhibit B to the Ernst Affidavit) and was done without the knowledge of Ferrostaal.

Deponent knows that the plaintiff and defendant Seven Seas are related corporations, both maintaining offices at 7[illegible] Fifth Avenue, New York, N. Y. In fact, they occupy the same office at that address. The plaintiff is the shipper named in the bill of lading, and the lading was issued by World Shipping Inc. "as Agent only by Authority of the Master". World Shipping Inc. reportedly was acting for Seven Seas, and in any event was not acting for Ferrostaal. It is submitted that the dating of the ladings at New York was only coincidental, since both the plaintiff and Seven Seas maintain their principal places of business in New York, whereas the shipments in suit were loaded at Cleveland, Ohio and carried to Antwerp, Belgium.

Under these circumstances, namely (a) that no privity of contact existed between Ferrostaal and the plaintiff, (b) that the plaintiff's and Seven Seas' incorporation of the terms of the Ferrostaal/Seven Seas charter into the bills of lading was an unauthorized act and interference with Ferrostaal's

J. Reynolds

Exhibit A

rights and (c) that the dating of the bills of lading at New York was only a coincidental contact with New York, deponent submits that under no stretch of the imagination may it be said that Ferrostaal transacted business in New York. Such a holding would have plaintiff benefit from its own wrong.

9. All other incidents of the charter parties in question and of the carriage which is the subject matter of the suit do not concern New York and for the most part are European oriented (see Ernst Affidavit). In fact, the only contact with the United States is the loading at Cleveland.

10. Another factor worthy of note is that the damages complained of are attributable to condensation, stowage and handling, for which ultimate liability would reside with the vessel owner and/or Seven Seas, the latter having retained and paid the stevedores on both ends.

WHEREFORE, deponent respectfully requests that an Order be entered quashing the service of process upon Ferrostaal and dismissing the Complaint as to it, and for such other, further or different relief as may be just in the premises.

PETER J. ZAMBITO

Sworn to before me this
day of February, 1974.

Notary Public
[illegible] New York

J. Reynolds

Exhibit A

39a

BILL OF LADING

UNIFORM BILL OF LADING 1946

[illegible] by

The Documentary Council of The Baltic and International Maritime Conference.

[illegible]

Shipped at Cl[illegible], Ohio
in apparent good order and condition by [illegible] International Inc
[illegible] on board the good Vessel called the [illegible]V. [illegible]
for carriage to [illegible]
or so near thereto as she may safely get, the following goods:

[illegible] Credit [illegible]

Cold Rolled Coils premier choix qualite
Commercial material Non Recuit Non Huile

[illegible] Number

[illegible] Coils 0.8 x 1000 MM 53[illegible]05 KILOS

Freight - Prepaid

// White

Notify: S.A. Fabrique de Fer de Maubeuche
B.P. 100, 59 Maubeuge (France)

Also notify: Thoumsin, Antwerp

Outer wrappers athmosperically rust staine
Outer wrappers slightly damaged
Some bands damaged and/or missing

[illegible]

(of which [illegible] on deck at Shippers' risk; the Carrier not being responsible for loss or damage howsoever arising) which are to be delivered in the like good order and condition at the aforesaid Port of Antwerp unto
Order of Shipper
or his or their Assign(s), he or they paying freight ~~at the rate of~~x
(say [illegible] per [illegible]), as per Charter-Party, dated March 5 197

All the terms, conditions, liberties, and exceptions of the Charter-Party are herewith incorporated. [illegible] dispatch to Consignee

This Bill of Lading shall have effect subject to the provisions of any legislation relating to the carriage of goods by sea which incorporates the rules relating to Bills of Lading contained in the International Convention, dated Brussels 25th August, 1924 and which is compulsorily applicable [illegible] but nothing herein contained shall be deemed [illegible]

Weight, measure, quality, quantity, condition, contents and value unknown.

IN WITNESS whereof the Master or Agent of the said Vessel has signed Bills of Lading 3 of this tenor and date, any one of which being accomplished the others to be void

[illegible] the [illegible] 19
[illegible]
[illegible] of the Master

J. Reynolds

Exhibit A

PLAINTIFF'S NOTICE TO EXAMINE
DEFENDANT SEVEN SEAS

CCG

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

---X

NIMPEX INTERNATIONAL INC.,

Plaintiff,

-against-

SS POLARLAND, her engines, boilers, etc.,
D/S A/S VESTLAND, RICH. AMLIE & CO.
A/S, SEVEN SEAS SHIPPING CORP.,
FERROSTAHL, "GmbH"(corporate
characterization fictitious, defendant intended
is explained in Schedule A),

Defendants.

---X

INDEX NO.
72 Civ. 3779 (EW)

NOTICE OF
EXAMINATION
BEFORE TRIAL.

VJL

SIRS:

PLEASE TAKE NOTICE that plaintiff will examine the defendant, Seven Seas Shipping Corp., before trial pursuant to the rules of this Court, by its President, Vice President or other officer or employee having knowledge of the facts which are the subject of the complaint, before a notary public, duly commissioned for the County of New York, or before some other person duly qualified, at the offices of the undersigned, 19th Floor, 161 William Street, Borough of Manhattan, City of New York, on the 27th day of March, 1974, at 10:30 a.m., and that you are required to produce said defendant at the time and place specified for said examination.

PLEASE TAKE FURTHER NOTICE that you are to bring with you all documents, charter party agreements, reports, correspondence, contracts, billsfof lading, receipts, invoices, memoranda, orders and/or agreements and any other papers pertaining to the subject matter of the captioned litigation.

Dated: New York, New York
February 22nd, 1974

Rec'd Mail
2/27/74

Yours, etc.,

DONOVAN, DONOVAN, MALOOF & WALSH

By: /s/ Charles C. Goodenough
Charles C. Goodenough
Attorneys for Plaintiff
161 William Street
New York, New York 10038

TO:

KIRLIN, CAMPBELL & KEATING
Attorneys for Defendant, Seven Seas Shipping Corp.
120 Broadway
New York, New York

Dougherty, Ryan, Mahoney, Pellegrino & Giuffra
Attorneys for Defendant, Ferrostahl AG
576 Fifth Avenue
New York, New York 10036

Haight, Gardner, Poor & Havens
Attorneys for Defendant, D/S A/S Vestland,
Rich. Amlie & Co. A/S
One State Street Plaza
New York, New York 10004

[illegible]

Sir:

Please take notice that the within is a true copy

of a

duly made and entered herein in the office of the clerk

of County and of this

Court on

Dated:

Yours, etc.

DONOVAN, DONOVAN, MALOOF & WALSH

Attorneys for

161 William Street

Borough of Manhattan, City of New York, N. Y. 10038

To

Sir:

Please take notice that an order of which the within is a true copy will be presented for settlement and signature herein to Hon.

at of

this court at

the County of State of New York,

on the day of 19 ,

at 9:30 o'clock in the forenoon, or as soon thereafter as Counsel can be heard.

Dated:

Yours, etc.

DONOVAN, DONOVAN, MALOOF & WALSH

Attorneys for

161 William Street

Borough of Manhattan, City of New York, N. Y. 10038

To

Index No. 72 Civ. 3779 (EW)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YOR

NIMPEX INTERNATIONAL INC.,
Plaintiff,
-against-
SS POLARLAND, her engines, boilers, etc., D/S A/S VESTLAND, RICH. AMLIE & CO. A/S, SEVEN SEAS SHIPPING CORP., and FERROSTAHL, "GmbH", (Corporate characterization fictitious, defendant intended is explained in Schedule A)
Defendants.

NOTICE OF EXAMINATION BEFORE TRIAL

DONOVAN, DONOVAN, MALOOF & WALSH

Attorneys for Plaintiff

161 William Street
Borough of Manhattan
City of New York, N. Y. 10038
Tel. No.: 964-3553

3/21/74

DEFENDANT'S POLARLAND, VESTLAND,
RICH. AMLIE NOTICE TO EXAMINE PLAINTIFF

11-26

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----------------------------------x

NIMPEX INTERNATIONAL INC.,

Plaintiff,

-against-

SS POLARLAND, her engines, boilers, etc., D/S A/S VESTLAND, RICH. AMLIE & CO. A/S, SEVEN SEAS SHIPPING CORP., and FERROSTAHL, "GmbH", (corporate characterization fictitious, defendant intended is explained in Schedule A),

Defendants.

-----------------------------------x

NOTICE OF EXAMINATION BEFORE TRIAL.

72 CIV. 3779 EW

JJPH

SES

VJL

S I R S :

PLEASE TAKE NOTICE that the defendants, s/s Polarland, D/S A/S Vestland and Rich. Amlie & Co. A/S, will take the deposition of defendant Seven Seas Shipping Corp., by its President, Vice President or some other officer or agent with knowledge of the facts, before trial, pursuant to the Federal Rules of Civil Procedure, Rule 26 et seq., before Nathan Borak, a notary public duly commissioned for the County of New York or before some other person duly qualified, at the offices of the undersigned, 21st Floor, One State Street Plaza, Borough of Manhattan, City of New York, on the 4th day of April, 1974 at 2:30 P.M. and that you are required to produce said defendant at the time and place specified for said examination.

Dated: New York, New York,
February 28, 1974.

Yours, etc.,
HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendants
s/s Polarland, D/S A/S Vestland
and Rich. Amlie & Co. A/S

By J. Ward O'Neill
A Member of the Firm
One State Street Plaza
New York, New York 10004

C-[illegible]

~~23a~~ 44a

TO:

DONOVAN, DONOVAN, MALOOF & WALSH
Attorneys for Plaintiff
161 William Street
New York, New York 10038

KIRLIN, CAMPBELL & KEATING
Attorneys for Defendant
Seven Seas Shipping Corp.
120 Broadway
New York, New York 10005

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO
& GIUFFRA
Attorneys for Defendant
Ferrostahl "GmbH"
576 Fifth Avenue
New York, New York

45a

Please take notice that

of which the within is a copy, was this day duly entered and filed in the within entitled action in the office of the Clerk of

Borough of
in the City of New York.
Dated, New York, 19

Yours &c.,
HAIGHT, GARDNER, POOR & HAVENS
Office and Post Office Address:
One State Street Plaza,
Borough of Manhattan,
New York, N. Y. 10004

for

To

for

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[illegible] INTERNATIONAL INC.,

Plaintiff,

-against-

SS POLARLAND, her engines, boilers, etc., D/S A/S VESTLAND RICH. AMLIE & CO. A/S, SEVEN SEAS SHIPPING CORP., and FERROSTAHL, "GmbH", (corporate characterization fictitious, defendant intended is explained in Schedule A),

Defendants.

NOTICE OF EXAMINATION BEFORE TRIAL

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendants,
SS Polarland, D/S A/S Vestland
and Rich. Amlie & Co. A/S
One State Street Plaza
Borough of Manhattan
New York, N. Y. 10004
DIgby 4-6800

Due service of the
within
is hereby admitted.
New York, 19
for

PLEASE TAKE NOTICE that

of which the within is a copy, will be presented for settlement and signature to the Hon.
one of the of this Court at

Borough of
City of New York, on the day of
, 19 , at M.
Dated, New York, 19

Yours &c.,
HAIGHT, GARDNER, POOR & HAVENS
Office and Post Office Address:
One State Street Plaza,
Borough of Manhattan,
New York, N. Y. 10004
for

To

for

45b

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----------------------------------x

HIMPEX INTERNATIONAL INC.,

Plaintiff,

-against-

SS POLARLAND, her engines, boilers, etc., D/S A/S VESTLAND, RICH. AMLIE & CO. A/S, SEVEN SEAS SHIPPING CORP., and FERROSTAHL, "GmbH", (corporate characterization fictitious, defendant intended is explained in Schedule A),

Defendants.

-----------------------------------x

ANSWER
and CROSSCLAIM
72 Civ. 3719 EW

Defendants, S/S Polarland, her engines, boilers, etc., D/S A/S Vestland and Rich. Amlie & Co. A/S, by their attorneys Haight, Gardner, Poor & Havens, allege upon information and belief as follows:

UJC

FIRST: Admit the existence of Rule 9(h) of the Federal Rules of Civil Procedure but except as so admitted, deny each and every allegation contained in paragraph First of the complaint.

SECOND: Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph Second of the complaint.

THIRD: Admit that D/S A/S Vestland owned the S/S Polarland and that Rich. Amlie & Co. A/S managed the S/S Polarland and that both are business entities organized and existing under and by virtue of the laws of the Kingdom of Norway but except as so admitted, deny each and every allegation contained in paragraph Third of the complaint.

FOURTH: Deny that the vessel was and now is a general ship employed in the common carriage of merchandise by water for hire, but except as so denied, deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph Fourth of the complaint.

FIFTH: Deny each and every allegation contained in paragraphs Fifth, Sixth and Eighth of the complaint.

SIXTH: Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph Seventh of the complaint.

FURTHER ANSWERING THE COMPLAINT AND FOR A FIRST, SEPARATE, PARTIAL AND/OR COMPLETE DEFENSE THERETO, DEFENDANTS RESPECTFULLY ALLEGE UPON INFORMATION AND BELIEF AS FOLLOWS:

SEVENTH: Repeat and reallege each and every admission, denial of knowledge or information and denial hereinabove set forth with the same force and effect as if herein repeated and set forth at length.

EIGHTH: The shipment, which is the subject of this suit, was subject to all the terms, conditions and exceptions contained in certain bills of lading by which the shipper, owner, consignee or holder of said bills of lading agreed to be and is bound.

NINTH: The United States Carriage of Goods by Sea Act govern the carriage of the shipment which is the subject of this suit.

TENTH: Said shipment was transported, carried and discharged and delivered subject to the contractual terms and conditions of said bills of lading. Any shortage, slackage, injury and/or damage existing at the time of the delivery of the goods, which defendants deny, it was due to causes for which the vessel, D/S A/S Vestland and Rich. Amlie & Co. A/S are liable or responsible by virtue of the provisions of said bills of lading and/or the United States Carriage of Goods by Sea Act.

FURTHER ANSWERING THE COMPLAINT AND FOR A SECOND, SEPARATE, PARTIAL AND/OR COMPLETE DEFENSE THERETO, DEFENDANTS s/s POLARLAND, D/S A/S VESTLAND AND RICH. AMLIE & CO. A/S RESPECTFULLY ALLEGE UPON INFORMATION AND BELIEF AS FOLLOWS:

ELEVENTH: Repeat and reallege each and every admission, denial of knowledge or information and denial hereinabove set forth with the same force and effect as if herein repeated and set forth at length.

TWELFTH: At all pertinent times, the s/s Polarland was operating under charter and, under the terms of the charterparties, any shortage, slackage, injury and/or damage of the shipment, which is the subject of this suit, are due to causes for which defendants Polarland, D/S A/S Vestland and Rich. Amlie & Co. A/S are neither liable nor responsible.

AS AND FOR A CROSSCLAIM AGAINST DEFENDANTS SEVEN SEAS SHIPPING CORP. AND FERROSTAHL, "GmbH", DEFENDANTS s/s POLARLAND, D/S A/S VESTLAND AND RICH. AMLIE & CO. A/S FURTHER ALLEGE UPON INFORMATION AND BELIEF AS FOLLOWS:

THIRTEENTH: Repeat and reallege each and every admission, denial of knowledge or information and denial hereinabove set forth with the same force and effect as if herein repeated and set forth at length.

FOURTEENTH: That during all pertinent times, the vessel was operating under charterparties running from

D/S A/S Vestland.

FIFTEENTH: Defendant D/S A/S Vestland duly performed all of its duties and obligations under and pursuant to the terms of the said charterparties.

SIXTEENTH: If plaintiff suffered any damages, and is entitled to recover from defendants s/s Polarland, D/S A/S Vestland and Rich.Amlie & Co. A/S, which liability is hereby denied, it is by reason of the failure of defendants Seven Seas Shipping Corp. and Ferrostahl "GmbH" to perform the obligations devolving upon them pursuant to the terms of said charterparties and, if liability for damage should be adjudged in favor of plaintiff against the defendants s/s Polarland, D/S A/S Vestland and Rich. Amlie & Co. A/S, then they are entitled to be indemnified by Seven Seas Shipping Corp. and Ferrostahl "GmbH".

SEVENTEENTH: During the time of the performance of its duties, and obligations and at all pertinent times, Seven Seas Shipping Corp. and Ferrostahl "GmbH" failed in the exercise of reasonable care and diligence and failed to fulfill those duties and obligations devolving upon them heretofore referred to in the crossclaim and were otherwise careless and negligent.

EIGHTEENTH: If plaintiff sustained any damages that entitle it to any recovery from defendants by reason of the matters alleged in the complaint, which liability defendants s/s Polarland, D/S A/S Vestland and Rich. Amlie & Co. A/S deny, it is by reason of the fault and neglect of Seven Seas Shipping Corp. and Ferrostahl "GmbH", their agents, servants and/or employees and has been improperly alleged as the fault of the s/s Polarland, D/S A/S Vestland and Rich. Amlie & Co. A/S in the complaint, and its liability for damages should be adjudged in favor of plaintiff and against defendant, then the s/s Polarland, D/S A/S Vestland and Rich. Amlie & Co. A/S are entitled to indemnity from Seven Seas Shipping Corp. and Ferrostahl and all liability should be borne by them and not by the s/s Polarland, D/S A/S Vestland and Rich. Amlie & Co. A/S.

NINETEENTH: During the time of the performance of its duties and obligations and during all pertinent times, Seven Seas Shipping Corp. and Ferrostahl (GmbH) failed to fulfill the duties and obligations devolving upon them pursuant to the provisions of the United States Carriage of Goods by Sea Act.

TWENTIETH: If plaintiff sustained any damage that entitled it to any recovery from defendants by reason of the matters alleged in the complaint, which liability is denied, it is by reason of the failure of Seven Seas Shipping Corp. and Ferrostahl "GmbH" to comply with the provisions and terms of the above referred to bills of lading and the United States Carriage of Goods by Sea Act and has been improperly alleged as the fault of the s/s Polarland, D/S A/S Vestland and Rich. Amlie & Co. A/S in the complaint and, if liability for damages should be adjudged in favor of the plaintiff and against defendants, then the s/s Polarland, D/S A/S Vestland and Rich. Amlie & Co. A/S are entitled to indemnity from Seven Seas Shipping Corp. and Ferrostahl "GmbH" in respect thereof and by reason of their said fault and all liability should be borne by them and not by s/s Polarland, D/S A/S Vestland and Rich. Amlie & Co. A/S.

WHEREFORE, the defendants s/s Polarland, D/S A/S Vestland and Rich. Amlie & Co. A/S, demand judgment dismissing the complaint as against them together with the costs and disbursements of this action, or, in the event that the s/s Polarland, D/S A/S Vestland and Rich. Amlie & Co. A/S be adjudged liable to plaintiff, they demand judgment over against Seven Seas Shipping Corp. and Ferrostahl "GmbH", jointly or severally, and for any and all sums which may be adjudged against defendants s/s Polarland, D/S A/S Vestland and Rich. Amlie & Co. A/S in favor of the plaintiff by reason of the matters alleged in said complaint, together with the costs, disbursements and attorneys' fees incurred in the defense of this action.

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendants
s/s Polarland, D/S A/S
Vestland and Rich. Amlie & Co. A/S

By J. Ward O'Neill
A Member of the Firm
One State Street Plaza
New York, New York 10004

52a

PLEASE TAKE NOTICE that

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ithin is a copy, was this day duly entered
nd filed in the within entitled action in the
ffice of the Clerk of

orough of
the City of New York.
ated, New York, 19

Yours &c.,

HAIGHT, GARDNER, POOR & HAVENS
Office and Post Office Address:
One State Street Plaza,
Borough of Manhattan,
New York, N. Y. 10004

for

o

for

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NYMPLEX INTERNATIONAL INC.,

Plaintiff,

-against-

SS POLARLAND, her engines,
boilers, etc., D/S A/S VESTLAND
RICH. AMLIE & CO. A/S, SEVEN
SEAS SHIPPING CORP., and
FERROSTAAL, "GmbH", (corporate
characterization fictitious,
defendant intended is explained
in Schedule A), Defendants.

ANSWER AND
CROSSCLAIM

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendants,
SS Polarland, D/S A/S Vestland
and Rich. Amlie & Co. A/S
One State Street Plaza
Borough of Manhattan
New York, N. Y. 10004
DIgby 4-6800

Due service of the
within
is hereby admitted.
New York, 19
for

PLEASE TAKE NOTICE that

of which the within is a copy, will be presented for settlement and signature to the Hon.
one of the of this Court at

Borough of
City of New York, on the day of
, 19 , at M.
Dated, New York, 19

Yours &c.,
HAIGHT, GARDNER, POOR & HAVENS
Office and Post Office Address:
One State Street Plaza,
Borough of Manhattan,
New York, N. Y. 10004
for

To

for

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DEF. SEVEN SEAS ANSWER
TO POLARLAND ET AL
CROSSCLAIM

S. ATTY'S
11-28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[illegible]

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NIMPEX INTERNATIONAL INC., :

Plaintiff, :

-against- : 72 Civ. 3779 (EW)

S.S. POLARLAND, her engines boilers, etc., D/S A/S VESTLAND, RICH. AMLIE & CO. A/S, SEVEN SEAS SHIPPING CORP., and FERROSTAAL, "GmbH", (corporate characterization fictitious, defendant intended is explained in Schedule A), :

ANSWER TO CROSS-CLAIM.

Defendants. :

-----------------------------------X

Defendant, SEVEN SEAS SHIPPING CORP., by its attorneys, Kirlin, Campbell & Keating, for its answer to cross-claim of S.S. POLARLAND, her engines, boilers, etc., D/S A/S VESTLAND, RICH. AMLIE & CO. A/S, alleges upon information and belief as follows:

FIRST: It denies it has any knowledge or information sufficient to form a belief as to the allegations contained in paragraph THIRTEENTH of the cross-claim.

SECOND: It denies that it has any knowledge or information sufficient to form a belief as to the allegations contained in paragraph FOURTEENTH of the cross-claim.

THIRD: It denies the allegations contained in paragraph FIFTEENTH of the cross-claim.

FOURTH: It denies the allegations contained in paragraph SIXTEENTH of the cross-claim.

FIFTH: It denies the allegations contained in paragraph SEVENTEENTH of the cross-claim.

SIXTH: It denies the allegations contained in paragraph EIGHTEENTH of the cross-claim.

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11-28
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SEVENTH: It denies the allegations contained in paragraph NINETEENTH of the cross-claim.

EIGHTH: It denies the allegations contained in paragraph TWENTIETH of the cross-claim.

WHEREFORE Defendant, SEVEN SEAS SHIPPING CORP., demands judgment dismissing the aforesaid cross-claim as against it, together with the costs and disbursements of this action.

Dated, New York, New York,
March 21, 1974

KIRLIN, CAMPBELL & KEATING,
Attorneys for Defendant,
SEVEN SEAS SHIPPING CORP.,
David W. Martowski
By____________________________
A Member of the Firm,

Office and P.O. Address
120 Broadway
New York, New York, 10005
(Tel. No.) 212-732-5520.

To: HAIGHT, GARDNER, POOR
& HAVENS,
Attorneys for Defendants
s/s POLARLAND, D/S A/S
Vestland and Rich. Amlie
& Co. A/S,
One State Street Plaza,
New York, New York, 10004;

DONOVAN, DONOVAN, MALOOF & WALSH
Attorneys for Plaintiff,
161 William Street
New York, New York, 10038;

DOUGHERTY, RYAN, MAHONEY,
PELLEGRINO & GIUFFRA,
Attorneys for Defendant,
FERROSTAHL "GmbH"
576 Fifth Avenue,
New York, New York, 10036.

55a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NIMPEX INTERNATIONAL INC.
Plaintiff,

-against-

SS POLARLAND, etc., D/S A/S VESTLAND, RICH. AMLIE & CO., A/S, SEVEN SEAS SHIPPING CORP., and FERROSTAHL "GmbH", (corporate characterization fictitious, defendant intended is explained in Schedule A) Defendants

ANSWER TO CROSS-CLAIM

KIRLIN, CAMPBELL & KEATING

Attorneys for SEVEN SEAS SHIPPING CORP.
ONE TWENTY BROADWAY,
NEW YORK, N. Y. 10005

(212) 732-5520

56a

(8)

DEFENDANT FERROSTAAL A. G.
REPLY AFFIDAVIT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U. S. DISTRICT COURT
FILED
MAR 27 197[illegible]
S. D. OF N. Y.

--------------------------------------x

NIMPEX INTERNATIONAL INC.,

Plaintiff,

-against-

SS "POLARLAND", her engines, boilers, etc., D/S A/S VESTLAND, RICH. AMLIE & CO. A/S, SEVEN SEAS SHIPPING CORP. and FERROSTAHL, "GmbH", (corporate characterization fictitious, defendant intended is explained in Schedule A),

Defendants.

--------------------------------------x

REPLY AFFIDAVIT
and
REPLY MEMORANDUM
OF LAW

72 CIV. 3779 (EW)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PETER J. ZAMBITO, being duly sworn, deposes and says:

1. That he is an attorney and member of the firm of DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, attorneys for defendant Ferrostaal AG (sued herein as "Ferrostahl, 'GmbH'" and hereinafter referred to as "Ferrostaal") and makes this Affidavit and submits this further Memorandum of Law in reply to the opposing Affidavit and Memorandum of Law submitted by plaintiff's counsel in opposition to Ferrostaal's motion to quash the service of process upon it and to dismiss the Complaint pursuant to Rule 12(b)(5) F.R.C.P. and Rule 12(b)(2) F.R.C.P., respectively.

2. Initially, it is important to note that the Master was the employee of the vessel owner or bareboat charterer, Molena Trust Incorporated ([illegible] the suit), and not the time charterer, Ferr[illegible]

EXHIBIT B

the voyage charterer, Seven Seas Shipping Corp. (hereinafter referred to as "Seven Seas"), to sign bills of lading on his behalf (on which point no evidence has been produced), such authorization does not concern nor bind the time charterer. That is a matter between the vessel owner, D/S A/S Vestland (Rich. Amlie & Co., A/S), and/or the bareboat charterer, Molena Trust Incorporated, on the one hand, and the voyage charterer, Seven Seas, on the other hand. Yet, plaintiff's counsel erroneously contends that the Master was the agent of Ferrostaal, a bare statement unsupported by any evidence or Affidavit based upon personal knowledge.

3. The moving papers contain an Affidavit from the Managing Director of Ferrostaal which clearly states in paragraph 7 thereof that the incorporation of the Ferrostaal/ Seven Seas charter party (Exhibit B to Weger Affidavit) into the bills of lading issued by Seven Seas' agent was done without the authorization or knowledge of Ferrostaal. Such statement has not been controverted and must be taken as true. Affidavits in support of a motion to quash the service of a Summons which are not controverted by the plaintiff are, for the purpose of the motion, to be deemed admitted. Rohlfing v. Cat's Paw Rubber Co., 90 F. Supp. 886 (D.C.Ill., 1951); Grantham v. Challenge-Cook Bros. Inc., 420 F.2d 1182 (C.A. 7, 1969).

And indeed, despite the fact that the plaintiff and Seven Seas are corporately related and maintain one office at 745 Fifth Avenue, New York, N. Y., no Affidavits based on personal knowledge have been offered in opposition to the moving Affidavit of Ferrostaal's Managing Director. The obvious inference to be derived is that the statements made by Ferrostaal's Managing Director, Mr. Ernst Weger, are true.

EXHIBIT B

4. The law is clear that where bills of lading are signed by one party and purport to be signed for another party as well, without said other party's authorization, the latter party (in this case Ferrostaal) is free from any responsibility based upon those bills of lading. United Nations Children's Fund (UNICEF) v. S/S Nordstern, 251 F. Supp. 833 (S.D.N.Y., 1968); The Poznan, 276 Fed. 418 (S.D.N.Y., 1921); Tube Products of India v. The S.S. Rio Grande, 1971 A.M.C. 1629 (S.D.N.Y., 1971)(not officially reported). See, also, Dempsey & Associates, Inc. v. S.S. Sea Star, 321 F. Supp. 663 (S.D.N.Y., 1970).

5. The uncontroverted facts of the Weger Affidavit, coupled with the decisions cited above, make it clear that Ferrostaal was not a party to the bills of lading and is free from any responsibility based upon those bills. UNICEF v. S/S Nordstern, supra; The Poznan, supra; and Tube Products of India v. The S.S. Rio Grande, supra.

And here, another dimension is added to the facts of the cases cited in that the plaintiff and the voyage charterer are corporately related, a fact of which deponent has personal knowledge.

6. In plaintiff's Memorandum of Law in opposition to the Ferrostaal motion, reliance is placed upon two (2) decisions for plaintiff's contention that Ferrostaal purportedly "transacted business" in the State of New York within the meaning of Section 302(a) 1 of the C.P.L.R., namely, Agrashell, Inc. v. Bernard Sirotta Company, 344 F.2d. 583 (C.A. 2, 1965) and Liquid Carriers Corp. v. American Marine Corp., 375 F.2d. 951 (C.A. 2, 1967). Neither case is in point!

In the Agrashell decision, the defendant, a

EXHIBIT B

New York partnership, sought to implead a Missouri corporation with which it had contracted to purchase black walnut shells and was met with a motion to dismiss on the ground of lack of personal jurisdiction. The motion had been granted by the Eastern District of New York Court. The Circuit Court held that the negotiation and concluding of goods contracts through the mails and by telephone with persons residing in New York, the signing of the sales contracts by the defendant in New York and that one of the contracts provided that it should be interpreted in accordance with New York law were not sufficient contacts with the State to give personal jurisdiction over the Missouri corporation. The Circuit Court reversed and remanded the case solely for the purpose of having a hearing on the question of which party to the contract "was responsible for the goods and the trucks [transporting them] while they were traveling through New York" over an eighteen (18) month period covered by the sales contracts.

The Liquid Carriers decision dealt with personal incursions by defendant's vice-president into New York for the purpose of soliciting business, negotiating contracts and aiding the plaintiff to sell defendant's products.

Both decisions do, however, make it clear that the party over whom the Court is asked to exercise personal jurisdiction must have engaged in some "purposeful" activity. The Supreme Court of the United States, in Hanson v. Deckla, 357 U.S. 235 (1958), at page 253, declared:

> ". . . it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. International Shoe Co. v. State of Washington, 326 U.S. 310, 319 [66 S.Ct. 154, 90 L.Ed. 95]." (emphasis added)

EXHIBIT B

Under no stretch of the imagination may it be said or concluded that Ferrostaal "purposefully availed itself of the privilege of conducting activities" within the State of New York.

7. The decisions interpreting Section 302(a) C.P.L.R. make it clear that not only must the defendant "transact business" in New York, the cause of action must arise from the transaction of business in New York. (See decisions cited at pages 4 and 5 of Memorandum of Law submitted in support of the motion).

Admittedly, the cargo in suit was transported from Cleveland, Ohio to Antwerp, Belgium (opposing Affidavit, paragraph 3), and thus the damage complained of could only have occurred during the receiving, storing, loading and stowing operations at Cleveland, during the ocean carriage and/or during the discharging, storing and delivery operations at Antwerp. Obviously, none of these possibilities touch New York, and indeed the Ferrostaal/Seven Seas charter party (Exhibit B to Weger Affidavit) never contemplated any contact with New York. How then could the cause of action have arisen from a transaction of business in New York?

At best, the dating of the covering bills of lading at New York was an "accidental" contact with the State, which is not synonymous with a "purposeful" act. Kaye-Martin v. Brooks, 267 F.2d. 394 (C.A. 7, 1959); E. Film Corp. v. United Features Syndicate, Inc., 172 F. Supp. 277 (D.C., Ill., 1958).

8. Plaintiff's counsel, in its opposing Affidavit, paragraph 10, makes reference to shipments which were carried on board the [illegible] "BENGAL" from Cleveland, Ohio to Antwerp, Belgium (Exhibits D, E, F and G to its opposing Affidavit).

EXHIBIT B

Deponent represents Ferrostaal with regard to an action brought by Mimpex International Inc. for alleged damage to the cargo so carried on the "PENGALL" and has consulted Ferrostaal as to the facts of that matter. For the Court's information, deponent annexes hereto as Exhibit A a copy of the "PENGALL" charter dated at Hamburg, April 9, 1970, entered into between Messrs. EUROTRAMP-Societe Maritime de Garances et d'Etudes, Paris, as disponent-Owners, and Ferrostaal AG, Essen, as Charterers, and Addendum thereto also dated and executed at Hamburg, which charter contemplates several trips from Great Lakes ports to Antwerp/Hamburg Range.

Deponent annexes hereto as Exhibit B a copy of the voyage charter relating to the "PENGALL", entered into between Ferrostaal and Seven Seas at Stockholm, March 5, 1970. It is to be noted that this charter was to apply to both vessels ("POLARLAND" and "PENGALL") and is the same as Exhibit B to the Weger Affidavit. Both Exhibit A and B hereto were furnished deponent by Ferrostaal, which informed deponent that the same circumstances as surrounded the issuance of the "POLARLAND" bills of lading apply here, i.e., that the "PENGALL" charter party was incorporated by reference into the bills of lading without the authorization or knowledge of Ferrostaal.

In any event, it could hardly be contended that the cause of action in the case at bar arose out of the issuance of the "PENGALL" bills of lading.

Deponent intends, if necessary, to move this Court for the same relief upon similar, if not identical, papers with regard to the "PENGALL" action against Ferrostaal. It is hoped that the Court's decision in this matter will be dispositive of the identical issue present in the "PENGALL" suit.

EXHIBIT B

Should the Court deem it necessary to a proper determination of this pending motion that an Affidavit on personal knowledge from an officer or director of Ferrostaal, relating to the "PERGALL" shipments, be supplied, deponent begs leave to pursue same, as there was not sufficient time between the receipt of the opposing Affidavit of plaintiff's counsel and the return date of this motion to secure same from Germany.

9. The law is equally clear that the burden of proof rests upon the plaintiff to sustain the elements upon which rests the validity of the service it has effected. Klisewich v. Mediterranean Agencies, Inc., 42 F.R.D. 624 (E.D.N.Y., 1966); Kelly v. Three Bays Corp., 173 F. Supp. 835 (S.D.N.Y., 1959), aff'd. on opinion below, 276 F.2d. 958 (C.A. 2, 1960); Scovill Manufacturing Co. v. Dateline Electric Co., Ltd., 319 F. Supp. 772 (D.C., N.D.Ill., 1970). The plaintiff has failed to sustain its burden of proof. In such regard, even the Complaint fails to allege a basis for jurisdiction over the person of Ferrostaal and is defective on its face.

10. No previous application has been made for the relief sought herein.

Pet J Zambito
PETER J. ZAMBITO

Sworn to before me this
[illegible] day of March, 1974.

Notary Public
VINCENT L [illegible]RA
[illegible]

EXHIBIT B

6+3a

Kopie

Frachtcontor Junge & Co.
Schiffsmakler
Hamburg 1, Ballindamm 17
Tel. [illegible], Telegr. [illegible]
Telex [illegible]

Adopted by
the Documentary Committee
of the Chamber of Shipping
of the United Kingdom

Issued [illegible]
Amended [illegible]
Amended [illegible]
Amended [illegible]
Amended [illegible]
Amended [illegible]

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(Formerly The Baltic and White Sea Conference)

UNIFORM TIME-CHARTER

Code-Name
BALTIME
1939

HAMBURG, April 9th, 19 70

IT IS THIS DAY MUTUALLY AGREED between Messrs. EUROTRAMP- Societe Maritime de Gerances et d'Etudes, Paris, as disponent-

Description of Vessel

Owners of the Vessel called "PENGALL" - French flag of 14403 tons gross / 6743 tons net Register, classed highest Bureau Veritas & ABS of 8,750 indicated horse power, carrying guaranteed ~~about~~ 21,459 lg tons deadweight on Board of Trade summer freeboard inclusive of bunkers, stores, provisions and boiler water, having as per builder's plan 795,181 cubic-feet grain capacity, exclusive of permanent bunkers, which contain about ___ tons, and fully loaded capable of steaming about 14 knots in good weather and smooth water ~~on a consumption of about~~ ifo 2000 : abt. 1.5 mdo (see cl. 2 ~~tons best Welsh coal or about~~ 25 tons ~~oil-fuel~~, now trading, —

and Messrs. Ferrostaal A.G.,

Charterers

of Essen, Charterers, as follows:

Period

1. The Owners let, and the Charterers hire the Vessel for a ~~period of~~ / timecharter trip of min. 20 days/max. 30 days duration ~~calendar months from the time (not a Sunday or a legal Holiday unless taken over) the Vessel is delivered~~ (irrespective of day and night and Sun- and Holidays) and placed at the disposal of the Charterers ~~between 9 a.m. and 6 p.m., or between 9 a.m. and 2 p.m. if on Saturday~~, at 1) taking inward pilot DETROIT, or 2) dropping outward pilot CHICAGO, ~~or 3) in DETROIT~~ where is, all in Owners'-option declarable by latest 2.5.70 ~~in such available berth where she can safely lie always afloat, as the Charterers may direct~~, she being in every way fitted for ordinary cargo service.

Port of delivery

Time for delivery

The Vessel to be delivered not before 17th May, 1970.

Trade

2. The Vessel to be employed in lawful trades for the carriage of lawful merchandise only between good and safe ports or places where she can safely lie always afloat within the following limits:

timecharter trip from one port Great LAKES with steel cargo and/or coils of max. piece weight 25 tons to 1/2 ports ANTWERP/HAMBURG range with Charterers' option to complete at one port ST. LAWRENCE with general harmless non-dangerous lawful merchandise being bulk grain and/or meals and/or metals and/or iron ore in bulk

No live stock nor injurious, inflammable or dangerous goods (such as acids, explosives, calcium carbide, ferro silicon, naphtha, motor spirit, tar, or any of their products) to be shipped.

Owners to provide

3. The Owners to provide and pay for all provisions and wages, for insurance of the Vessel, for all deck and engine-room stores and maintain her in a thoroughly efficient state in hull and machinery during service.

The Owners to provide one winchman per hatch. If further winchmen are required, or if the stevedores refuse or are not permitted to work with the Crew, the Charterers to provide and pay qualified shore-winchmen.

Charterers to provide

4. Whilst on hire The Charterers to provide and pay for all fuel-oil and diesel-oil ~~coals, including galley coal, oil-fuel, water for boilers~~, port charges, pilotages (whether compulsory or not), canal steersmen, boatage, lights, tug-assistance, consular charges (except those pertaining to the Master, Officers and Crew) canal, dock and other dues and charges, including any foreign general municipality or state taxes, also all dock, harbour and tonnage dues at the ports of delivery and re-delivery (unless incurred through cargo carried before delivery or after re-delivery) agencies, commissions, also to arrange and pay for loading, trimming, stowing (including dunnage and shifting boards, excepting any already on board), unloading, weighing, tallying and delivery of cargoes, surveys on hatches, meals supplied to officials and men in their service and all other charges and expenses whatsoever including detention and expenses through quarantine ~~(including cost of fumigation and disinfection)~~. Lubricating oil, engine grease and drinking water to be for Owners' account.

EXHIBIT A

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gear, including special [illegible] for the Charterers account. ~~The Vessel to be fitted with [illegible] capable of handling lifts up to 2 tons.~~

Bunkers

4. The Charterers at port of delivery and the Owners at port of re-delivery to take over and pay for all ~~coal or~~ oil-fuel/diesel remaining in the Vessel's bunkers at current/price at the respective ports./and pro rata

The Vessel to be/re delivered with not less than 150 tons and not exceeding 250 tons of ~~coal or~~ IFO and delivered and ~~oil-fuel~~ in the Vessel's bunkers min. 80 and max. 150 tons Marine diesel oil,

Hire

6. The Charterers to pay as hire/US$ 5,300.- if first delivery option as per Clause 1 exercised resp. US$5,200.- if second or third option exercised, all per running day or pro rata (see also Cl. 7) ~~per 30 days~~, commencing in accordance with clause 1 until her re-delivery to the Owners.

Payment

Payment of hire to be made in cash, in NANTES without discount, every ~~30~~ 20 days, in advance./Hire to be paid to Societe Generale Nantes acc.No. c[illegible]5581 to the credit of Ste.Nantaise des Chargeurs de l' Ouest.

In default of payment the Owners to have the right of withdrawing the Vessel from the service of the Charterers, without noting any protest and without interference by any court or any other formality whatsoever and without prejudice to any claim the Owners may otherwise have on the Charterers under the Charter./ Charterers to pay the balance for the estimated option in excess of the 20 days on expiration of the 20 days less amount for bunkers in port of redelivery.

Re-delivery

7. The Vessel to be re-delivered on the expiration of the Charter in the same good order as when delivered to the Charterers (fair wear and tear excepted) at an ice free port in the Charterers' option in ANTWERP/HAMBURG range dropping outward pilot from discharging port with both irrespective of day and night and Sun- and Holidays. ~~between 9 a.m. and 6 p.m., and 9 a.m. and 2 p.m. on Saturday, but the day of re-delivery shall not be a Sunday or legal Holiday.~~

Notice

The Charterers to give the Owners not less than ten days' notice at which port and on about which day the Vessel will be re-delivered.

Should the Vessel be ordered on a voyage by which the Charter period will be exceeded the Charterers to have the use of the Vessel to enable them to complete the voyage, provided it could be reasonably calculated that the voyage would allow re-delivery about the time fixed for the termination of the Charter, ~~but for any time exceeding the termination date the Charterers to pay the market rate if higher than the rate stipulated herein.~~ In case the max. period of 30 days should be exceeded, Charterers to pay Owners US$1,000.- for each day (or pro rata) beyond the 30 days period as extra hire.

Cargo Space

8. The whole reach and burthen of the Vessel, including lawful deck-capacity to be at the Charterers' disposal, reserving proper and sufficient space for the Vessel's Master, Officers, Crew, tackle, apparel, furniture, provisions and stores.

Master

9. The Master to prosecute all voyages with the utmost despatch and to render customary assistance with the Vessel's Crew. The Master to be under the orders of the Charterers as regards employment, agency, or other arrangements. The Charterers to indemnify the Owners against all consequences or liabilities arising from the Master, Officers or Agents signing Bills of Lading or other documents or otherwise complying with such orders, as well as from any irregularity in the Vessel's papers or for overcarrying goods. The Owners not to be responsible for shortage, mixture, marks, nor for number of pieces or packages, nor for damage to or claims on cargo caused by bad stowage or otherwise.

If the Charterers have reason to be dissatisfied with the conduct of the Master, Officers, or Engineers, the Owners, on receiving particulars of the complaint, promptly to investigate the matter, and, if necessary and practicable, to make a change in the appointments.

Directions and Logs

10. The Charterers to furnish the Master with all instructions and sailing directions and the Master and Engineers to keep full and correct logs accessible to the Charterers or their Agents.

Suspension of Hire etc.

11. (A) In the event of drydocking or other necessary measures to maintain the efficiency of the Vessel, deficiency of men or Owners stores/breakdown of machinery, damage to hull or other accident, either hindering or preventing the working of the vessel ~~and continuing for more than twenty-four consecutive hours~~, no hire to be paid in respect of any time lost thereby during the period in which the Vessel is unable to perform the service immediately required. Any hire paid in advance to be adjusted accordingly.

incl. strike of officers and crew,

(B) In the event of the Vessel being driven into port or to anchorage through stress of weather, trading to shallow harbours or to rivers or ports with bars or suffering an accident to her cargo, any detention of the Vessel and/or expenses resulting from such detention to be for the Charterers' account even if such detention and/or expenses, or the cause by reason of which either is incurred, be due to, or be contributed to by, the negligence of the Owners' servants

EXHIBIT B

Drawing of pistons

Cleaning Boilers

12. ~~Cleaning of boilers~~ whenever possible to be done during service, but if impossible the Charterers to give the Owners necessary time for this purpose. ~~If the Vessel be detained beyond 48 hours hire to cease until again ready.~~ for the time thereby occupied and the cost of extra fuel consumed in consequence thereof and all extra port expenses to be for Owners' account.

Responsibility and Exemption

13. The Owners only to be responsible for delay in delivery of the Vessel or for delay during the currency of the Charter and for loss or damage to goods onboard, if such delay or loss has been caused by want of due diligence on the part of the Owners or their Manager in making the Vessel seaworthy and fitted for the voyage or any other personal act or omission or default of the Owners or their Manager. The Owners not to be responsible in any other case nor for damage or delay whatsoever and howsoever caused even if caused by the neglect or default of their servants. The Owners not to be liable for loss or damage arising or resulting from strikes, lock-outs or stoppage or restraint of labour (including the Master, Officers or Crew) whether partial or general.

The Charterers to be responsible for loss or damage caused to the Vessel or to the Owners by goods being loaded contrary to the terms of the Charter or by improper or careless bunkering or loading, stowing or discharging of goods or any other improper or negligent act on their part or that of their servants.

Advances

2-[illegible] com-
[illegible] on

14. The Charterers or their Agents to advance to the Master, if required, necessary funds for ordinary disbursements for the Vessel's account at any port charging only ~~interest at 6 per cent. p.a.~~ such advances to be deducted from hire. Charterers not to be responsible for the application of such advances.

Excluded Ports

Ice

15. The Vessel not to be ordered to nor bound to enter: a) any place where fever or epidemics are prevalent or to which the Master, Officers and Crew by law are not bound to follow the Vessel; b) any ice-bound place or any place where lights, lightships, marks and buoys are or are likely to be withdrawn by reason of ice on the Vessel's arrival or where there is risk that ordinarily the Vessel will not be able on account of ice to reach the place or to get out after having completed loading or discharging. The Vessel not to be obliged to force ice. If on account of ice the Master considers it dangerous to remain at the loading or discharging place for fear of the Vessel being frozen in and/or damaged, he has liberty to sail to a convenient open place and await the Charterers' fresh instructions.

Unforeseen detention through any of above causes to be for the Charterers' account.

Loss of Vessel

16. Should the Vessel be lost or missing, hire to cease from the date when she was lost. If the date of loss cannot be ascertained half hire to be paid from the date the Vessel was last reported until the calculated date of arrival at the destination. Any hire paid in advance to be adjusted accordingly.

Overtime

17. The Vessel to work day and night if required. ~~The Charterers to refund the Owners their outlays for~~ all overtime paid to Officers and Crew according to the hours and rates stated in the Vessel's articles. to be for Owners' account.

Lien

18. The Owners to have a lien upon all cargoes and sub-freights belonging to the Time-Charterers and any Bill of Lading freight for all claims under this Charter, and the Charterers to have a lien on the Vessel for all moneys paid in advance and not earned.

Salvage

19. All salvage and assistance to other vessels to be for the Owners' and the Charterers' equal benefit after deducting the Master's and Crew's proportion and all legal and other expenses including hire paid under the charter for time lost in the salvage, also repairs of damage and coal or oil-fuel consumed. The Charterers to be bound by all measures taken by the Owners in order to secure payment of salvage and to fix its amount.

Sublet

20. The Charterers to have the option of subletting the Vessel, giving due notice to the Owners, but the original Charterers always to remain responsible to the Owners for due performance of the Charter.

War

~~21. (A) The Vessel unless the consent of the Owners be first obtained not to be ordered nor continue to any place or on any voyage nor be used on any service which will bring her within a zone which is dangerous as the result of any actual or threatened act of war, war hostilities, warlike operations, acts of piracy or of hostility or malicious damage against this or any other vessel or its cargo by any person, body or State whatsoever, revolution, civil war, civil commotion or the operation of international law, nor be exposed in any way to any risks or penalties whatsoever consequent upon the imposition of Sanctions, nor carry any goods that may in any way expose her to any risks of seizure, capture, penalties or any other interference of any kind whatsoever by the belligerent or fighting powers or parties or by any Government or Ruler.~~

~~(B) Should the Vessel approach or be brought or ordered within such zone, or be exposed in any way to the said risks, (1) the Owners to be entitled from time to time to insure their interests in the Vessel and/or hire against any of the risks likely to be involved thereby on such terms as they shall think fit, the Charterers to make a refund to the Owners of the premium on demand; and (2) notwithstanding the terms of clause 11 hire to be paid for all time lost including~~

EXHIBIT B

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~~[illegible] in returning to proceed to such zone or to be exposed to war risks.~~

Section (C) is optional and should be deleted unless agreed

~~(C) In the event of the wages of the Master, Officers and/or Crew or the cost of provisions and/or stores for deck and/or engine room and/or insurance premiums being increased by reason of or during the existence of any of the matters mentioned in section (A) the amount of any increase to be added to the hire and paid by the Charterers on production of the Owners' account therefor, such account being rendered monthly.~~

~~(D) The Vessel to have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or in any other wise whatsoever given by the Government of the nation under whose flag the Vessel sails or any other Government or any person (or body) acting or purporting to act with the authority of such Government or by any committee or person having under the terms of the war risks insurance on the Vessel the right to give any such orders or directions.~~

~~(E) In the event of the nation under whose flag the Vessel sails becoming involved in war, hostilities, warlike operations, revolution, or civil commotion, both the Owners and the Charterers may cancel the Charter and, unless otherwise agreed, the Vessel to be redelivered to the Owners at the port of destination or, if prevented through the provisions of section (A) from reaching or entering it, then at a near open and safe port at the Owners' option, after discharge of any cargo on board.~~

~~(F) If in compliance with the provisions of this clause anything is done or is not done, such not to be deemed a deviation.~~

Cancelling

22. Should the Vessel not be delivered by the 5th day of June 19 70, the Charterers to have the option of cancelling.

If the Vessel cannot be delivered by the cancelling date, the Charterers, if required, to declare within 48 hours after receiving notice thereof whether they cancel or will take delivery of the Vessel.

Arbitration

23. Any dispute arising under the Charter to be referred to arbitration in Hamburg ~~London (or such other place as may be agreed)~~ one Arbitrator to be nominated by the Owners and the other by the Charterers, and in case the Arbitrators shall not agree then to the decision of an Umpire to be appointed by them, the award of the Arbitrators or the Umpire to be final and binding upon both parties.

General Average

24. General Average to be settled according to York/Antwerp Rules, 1950. Hire not to contribute to General Average.

Commission

25. The Owners to pay a commission of 2-1/2 to Messrs. Ferrostaal A.G., Essen, and Messrs. Frachtcontor Junge & Co., Hamburg, for equal devision, on any hire paid under the Charter, but in no case less than is necessary to cover the actual expenses of the Brokers and a reasonable fee for their work. If the full hire is not paid owing to breach of Charter by either of the parties the party liable therefor to indemnify the Brokers against their loss of commission.

and 1-1/4% to Messrs. Lerbret & Cie. SA.,)s.

Should the parties agree to cancel the Charter, the Owners to indemnify the Brokers against any loss of commission but in such case the commission not to exceed the brokerage on one year's hire.

Clauses Nos. 26 to 40, both inclusive, as attached are deemed to be incorporated in this Charter Party.

OWNERS:

EUROTRAMP
P. ARRADON
Fondé de Pouvoirs

CHARTERERS:

FERROSTAAL
A.G.
Abl. Verschiffung

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by authority of the Baltic and
International Maritime Conference.

EXHIBIT B

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FRACHTCONTOR JUNGE & CO.
Schiffsmakler · Versicherungen
HAMBURG – EMDEN

telefon: 32 23 91
telex:
GENERAL CHARTERING DEPT. 02 161156
COAL CHARTERING DEPT. 02 161096
COASTING CHARTERING DEPT. 02 161256
Telegramme: TRIMMING
NEW BOE CODE

2 Hamburg 1,
Ballindamm 17

Kopie

ADDENDUM NO. 1

to Baltime Charterparty M/V "PENGALL", dated Hamburg, 9th April, 1970

It is this day mutually agreed between Messrs. Eurotramp-Societe Maritime de Gerances et d'Etudes, Paris, as Owners, and Messrs. Ferrostaal A.G., Essen, as Charterers:

> That the M/V "PENGALL" has been fixed for further two trips in accordance with Clause No. 2 of covering Charterparty.
>
> First trip with laydays/cancelling 10th/30th July, 1970; second trip with laydays/cancelling 25th August/25th September, 1970: to be narrowed to a 15 days spread, declarable latest on 1st July, 1970;
>
> Owners' option to substitute M/V "PENGALL" by M/V "JEAN SCHNEIDER", being a sister-vessel, but having 752,407 cbft grain.

All other terms, conditions and exceptions, including hire of the covering Charterparty, to remain unaltered and in full force.

Hamburg, April 20th, 1970

OWNERS:

EUROTRAMP

F. ABBADON
Fondé de Pouvoirs

CHARTERERS:

FERROSTAAL
A.G.
Abt. Verfrachtung

EXHIBIT B

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37. If vessel calls at any US-Port for purpose of loading or discharging cargo and/or embarking or disembarking passengers all equipment shall comply with regulations established by US-Public Law 85-742 Party (safety and health regulations for longshoring) if longshoremen are not permitted to work due to failure of the Master and/or Owners and/or Owners' agents to comply with the afore-mentioned regulations any delay resulting therefrom shall be for Owners' account.

38. Paramount Clause to be inserted in Bs/L only.

39. Any extra insurance on account of trading to and from the Great Lakes to be for Owners' account.

40. Owners to victual when authorized by Charterers or their agents pilot, stevedores, etc., at resp. US$ 0.75 for breakfast and US$ 2.00 for dinner and supper, incl. wines but excl. liquors and alcohols.

EXHIBIT B

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[illegible] Owners of the [illegible] [illegible] Register [illegible]

or motor-vessel to be nominated of [illegible] tons [illegible] deadweight [illegible]

carrying about [illegible] See Clause 1 and [illegible]

and expected ready to load under this Charter [illegible]

Seven Seas Shipping Corp. of New York as Charterers

That the said vessel shall proceed to See Clause 1[illegible] or so near thereto as she may safely get and lie always afloat, and there load a full and complete cargo (if shipment of deck cargo agreed same to be at Charterers' risk [illegible]

See Clause 16

(Charterers to provide all mats and/or wood for dunnage and any separations required, the Owners allowing the use of any dunnage wood on board if required) which the Charterers bind themselves to ship, and being so loaded the vessel shall proceed to

See Clause 16

as ordered on signing Bills of Lading or so near thereto as she may safely get and lie always afloat and there deliver the cargo on being paid freight – on delivered / intaken quantity – as follows

See Clause 16

2. (4) [illegible]

Cash for vessel's ordinary disbursements at port of loading to be advanced by Charterers if required at highest current rate of exchange, subject to two per cent. [illegible] and other expenses.

See Clause 16

3. (5) [illegible]

8

Time to commence at 1 p.m. if notice of readiness to load is given before noon and at 8 a.m. next working day if notice given during office hours after noon.

The notice to be given to the Shippers, Messrs.

Time lost in waiting for berth to count as loading time.

4. (6) [illegible] Time to commence at 1 p.m. if notice of readiness to discharge is given before noon, and at 8 a.m. next working day if notice given during office hours after noon.

8

See Clause 16

Time lost in waiting for berth to count as discharging time.

5. (7) [illegible] Demurrage at the rate of US $ 3.000.- (Threethousand) per day or pro rata for any part of a day, payable day by day, [illegible]

6. (11) [illegible]

7. (14) In every case the Owner shall appoint his own Broker or Agent both at the port of loading and the port of discharge. Owners paying customary Agency fee

8. (15) 2½ % [illegible] on the freight earned is due to [illegible] Jurgo & Co and [illegible] for equal division

In case of non-execution at least ⅓ of the brokerage on the estimated amount of freight and dead-freight to be paid by the Owners to the Brokers as indemnity for the latter's expenses and work. In case of more voyages the amount of indemnity to be mutually agreed.

9. [illegible] as in part B, which constitutes a part of this Charter as though fully set forth herein

Enclosed Clauses 16 - 24 to be included in this Charter Party.

[illegible] of two originals

Contract valid for MV "Pagall" and MV "[illegible]"

BEST COPY AVAILABLE

EXHIBIT B

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ADDITIONAL CLAUSES TO CHARTER PARTY DATED STOCKHOLM 5th March, 1970

16. This contract is valid for following shipments of steel products i.e. coils, plates, billets, slabs, ingots, blooms and wire rods, provided shipped in compressed bundles, measuring max. 45 cbft per ton.

From New Orleans:

About 32.000 tons March/early April 1970, whereof about 8/10.000 tons to be shipped in March 1970.
Charterers have the option to ship further about 50.000 tons from New Orleans May/December 1970.

From Philadelphia or Baltimore:

About 70.000 tons March/June 1970 of which m/s UTVIK shall load one cargo in March.
Charterers have the option to ship further about 100.000 tons July/December 1970.

From Cleveland, Erie, Chicago and Detroit:

About 50/60.000 tons NOW/June 1970
Charterers option further use m/s ATO[illegible]A and m/s UTVIK /during/ July/October 1970 both included. Such options to be declared 6 weeks in advance.

Destinations:

Antwerp	(about 70 % of total quantity)
Bilbao	(about 10/20 % of total quantity)
El Ferrol	
Barcelona	
La Spezia	

Shipping dates, quantities and ports within above mentioned agreement to be mutually agreed. Anyhow it is agreed that thecontract is based on full shiploads for each voyage resp. up to Lakes draft for Lake cargoes.

To be included it is understood in affreightment contract in the event Charterers supplying mills, for some reason cannot meet schedules to agreed upon that Nimpex and/or Seven Seas would have the right to book outside cargo in order to eliminate deadfreight, with the same terms and conditions to apply and to mean as though they were Nimpex cargo.

Charterers also have privilege of booking suitable bulk cargo other than steel if cargo not available, always from the same destinations and to same destinations or range at mutually agreed rates but never to exceed fixed rates.

Freight rates:	Philadelphia/Baltimore	New Orleans
Antwerp	$ 7.25	$ 8.25
Bilbao	$ 8.40	$ 9.35
Barcelona	$ 9.40	$ 10.35
La Spezia	$ 10.40	$ 11.35
El Ferrol	$ 8.40	$ 9.35

7/a

Freight rates:	Erie	Cleveland	Detroit	Chicago
Antwerp	$ 10.25	$ 10.25	$ 9.35	$ 11.-
Bilbao	$ 11.25	$ 11.25	$ 10.35	$ 12.-
Barcelona	$ 12.25	$ 12.25	$ 11.85	$ 13.-
La Spezia	$ 13.25	$ 13.25	$ 12.35	$ 14.-
El Ferrol	$ 11.25	$ 11.25	$ 10.85	$ 12.-

All rates per long ton basis one loadingport/one dischargingport.
25 Cents extra per long ton for each additional port
Freight to be paid within [illegible] days after signing B/L discountless and non-returnable ship and/or cargo lost or not lost.

Loading rates:

Cleveland	3.000.-
Philadelphia/Baltimore	3.000:-
New Orleans	3.000.-
Erie	3.500.-
Chicago	3.000.-
Detroit	4.000.-

Discharging rates:

Antwerp	4.500.-
Bilbao	2.000.-
Barcelona	2.500.-
La Spezia	1.500.-
El Ferrol	2.000.-

The cargo to be loaded, stowed, lashed and discharged by Charterers Stevedores free of expense to the vessel.
Time for loading and discharging to be reversible.

At loading and discharging time to count whether in berth or not 8 am first day after arrival wshex, working time 8 am Monday through 5 pm Friday, except ports where normal working hours are noon Saturday.

17. For vessel which has been nominated and accepted Owners to give 7 days notice of loadreadiness to Seven Seas Shipping Corp. New York and also to keep Charterers closely advised of vessel´s position. Also to give Agents at loading port 24 hours notice of ETA.

18. Owners to pay despatch at the rate of US $ 2.000.- per day or pro rata for laytime saved in loading and discharging.

19. Vessels tanks tops are suitable for fork lift loading of steel coils.

20. Vessel shall supply full light for night work on deck and in the holds, if required on board.

21. Owners option use gearless tonnage after mutual agreement . However for geared vessels cargo gear and all other equipment shall complay with regu tions established under 33 U.S. Code Section 941 and Master shall have in his possession a valid "Certificate of Test and Examination" of cargo ge issued by the National Cargo Bureau or its equivalent.

failure to have such certificate or to comply with such regulations.

22. Owner guarantees vessel is not prohibited from trading with the United States by law, order or regulation of the United States Government.

23. Cargo wharfage to be for Charterers account. Owners paying portdues, berthing expenses etc. which are normally paid by vessels. Taxes and tolls on cargo for Charterers account. Taxes and tolls on vessel for Owners account.

24. Dunnage to be for Charterers account. Cardeck material on board not to be used as dunnage.

ATTY'S NO. 11-28

MEMORANDUM OPINION GRANTING
DEF. FERROSTAAL'S MOTION
TO DISMISS

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72 Civil 3779

The burden is on plaintiff to establish the court's jurisdiction. W.A. Kraft Corp. v. Terrace on the Park, Inc., 337 F. Supp. 206, 208 n.3 (D.N.J. 1972); Leasco Data Processing Equip. Corp. v. Maxwell, 319 F. Supp. 1256, 1260 (S.D.N.Y. 1970). Under the New York long-arm statute, jurisdiction may be acquired over a foreign corporation if it is "doing business" in the state or the cause of action arises out of the corporation's transacting business in the state. Plaintiff apparently bases its claim to jurisdiction over defendant on the bill of lading, signed by World Shipping, Inc. "as Agent only by Authority of the Master." Plaintiff, however, offers no proof that World Shipping was or is defendant's agent; defendant specifically denies that the master was its agent, and that World Shipping was its agent. The plaintiff has failed to controvert this denial. Since there is no other apparent connection between defendant and New York, this court does not have jurisdiction over the moving defendant.

U.S. DISTRICT COURT
FILED
MAR 25 1974
S.D. OF N.Y.

MICROFILM
MAR 27 1974

Dated: New York, N. Y.
March 25, 1974

Edward Weinfeld
United States District Judge

Nimpex Intl v Polarland
(motion by [illegible] R.M to dismiss as against Ferrostaal)
granted etc.

e-7-1883

cnx

United States District Court
FOR THE
SDNY

NIMPEX INTL. INC.	WEINFELD, J.	
vs.	Civil Action No.	
SS POLARLAND ETC.		72-3779

There was entered on the docket 3/25/74, 19

~~an order (judgment)~~ memo end. Raymond Burghardt

7-1883

DEFENDANT VESTLAND'S NOTICE TO DEPOSE GREAT LAKES

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NIMPEX INTERNATIONAL INC.,

Plaintiff,

-against-

SS POLARLAND, her engines, boilers, etc., D/S A/S VESTLAND, RICH, AMLIE & CO., A/S, SEVEN SEAS SHIPPING CORP., and FERROSTAHL, "GmbH", (corporate characterization fictitious, defendant intended is explained in Schedule A of the Complaint).,

Defendants.

72 Civ. 3779 (EW)

NOTICE OF DEPOSITION UPON ORAL EXAMINATION

SIRS:

PLEASE TAKE NOTICE that defendants, D/S A/S Vestland and Rich, Amlie & Co., A/S, will take the deposition of Great Lakes International Corporation, by its Mr. Greg, or by its President, Vice-President or some other officer or managing agent with knowledge of the facts, pursuant to Rule 45 of the Federal Rules of Civil Procedure and the Rules and Practices of this Court before a notary public, duly commissioned for the County of Cuyahoga, or before some other person duly qualified, at the offices of Ray, Robinson, Keenen & Hanninen, 1550 Union Commerce Building, Cleveland, Ohio, on the 10th day of June, 1974, at 11:00 a.m.

PLEASE TAKE FURTHER NOTICE that at the time of said deposition Great Lakes International Corp. is required to produce and to permit the copying of each of the items and/or documents listed below which are in the possession, custody or control of said corporation, Any and all correspondence with any of the parties to this action concerning the storage or loading of cargo placed on board the m/s POLARLAND during May 1970, and any contracts, bills of lading, reports, memoranda, receipts, contracts of affreightment, survey reports, agreements, telexes, telegrams, delivery receipts, delivery orders, invoices for services performed by Great Lakes International Corp. (with evidence of payment therefor), all in connection with said storage and loading of cargo onto the m/s POLARLAND in May 1970, and any other writings pertaining in any way to the shipment which is the subject of this suit (bills of lading Nos. 1, 2 and 3 dated May 12, 1970, at Cleveland, Ohio).

Dated: New York, N. Y.
June 3, 1974

Yours, etc.,

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendants, D/S A/S
Vestland & Rich Amile & Co., A/S
By

One State Street Plaza
New York, N. Y. 10004

TO:

DONOVAN, DONOVAN, MALOOF & WALSH, ESQS.
Attorneys for Plaintiff
161 William Street
New York, N. Y. 10038

KIRLIN, CAMPBELL & KEATING, ESQS.
Attorneys for Defendant
Seven Seas Shipping Corp.
120 Broadway
New York, N. Y. 10006

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MEMORANDUM DECISION GRANTING PLAINTIFF'S MOTION TO ADD PARTY PLAINTIFF

m

72 Civ. 3779

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Motion granted subject to the right of all defendants to full discovery on any issue that may be asserted as a result of the addition of Travelers Indemnity Co. as party plaintiff. at the trial, Any party may submitt additional proof it feels is warranted by reason of the addition of Travelers Indemnity Co. as party plaintiff.

July 17, 1974

Edward Weinfeld
U.S.D.J.

U.S. DISTRICT COURT
JUL 17 1974
S. D. OF N. Y.

KIRLIN, CAMPBELL

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INDEX NO. 72 Civ. 3779 EW JUL 18 1974 microfilm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NIMPEX INTERNATIONAL INC.,
Plaintiff,

-against-

SS POLARLAND, her engines, boilers, etc., D/S A/S VESTLAND, RICH. AMLIE & CO. A/S, SEVEN SEAS SHIPPING CORP., and FERROSTAHL "GmbH" (corporate characterization fictitious, defendant intended is explained in Schedule A of the Complaint),
Defendants.

NOTICE OF MOTION,
MOTION
-and-
AFFIDAVIT

DONOVAN, DONOVAN, MALOOF & WALSH

Attorneys for Plaintiff

161 William Street
Borough of Manhattan
City of New York, N. Y. 10038
Tel. No.: 964-3553

TRANSCRIPT OF PROCEEDINGS
OF JUNE 8, 1974

(Case called.)

MR. KENNEDY: Plaintiff is ready.

MR. CORWIN: Defendant shipowner is ready, your Honor.

THE COURT: Proceed.

MR. GOODENOUGH: Plaintiff calls Mr. Martin J. Resnick.

MARTIN J. RESNICK, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GOODENOUGH:

Q Mr. Resnick, by whom are you employed?

A American Industries Corporation.

Q How long have you been employed by American Industries?

A Approximately two years.

Q In what capacity, sir?

A Steel trader.

Q And prior to two years ago, by whom were you employed?

A Nimpex International.

Q In what capacity?

A Steel trader.

Q Mr. Resnick, were you employed by Nimpex in May of 1970?

A Yes, I was.

Q In what capacity?

A Steel trader and traffic controller.

Q In the course of your duties with Nimpex, did you arrange for the sale of any shipments of steel for export, for import, buying and selling?

A Yes, I did.

Q On behalf of Nimpex?

A Yes, sir.

Q Mr. Resnick, I show you this document.

Would you look at it please and identify it for the Court?

A This is an invoice from Nimpex International to Inereisen Stahlhandel, covering a shipment of cold rolled coils for export.

Q Was this invoice taken from your files?

A Yes, it was.

MR. GOODENOUGH: Will you mark it for identification, please.

(Plaintiff's Exhibit 1 marked for identification.)

MR. GOODENOUGH: Your Honor, may we offer this in evidence?

(Plaintiff's Exhibit 1 for identification received in evidence.)

THE COURT: This is an invoice from Nimpex to Inereisen Stahlhandel, is that right, for the --or covering the coils?

A Yes, sir.

Q Mr. Resnick, according to the terms of that invoice, that is, Plaintiff's Exhibit 1, would you recite the terms of the sale?

A C.I.F./Free out Antwerp.

Q The I in the C.I.F., what does that refer to?

A Insurance.

Q Under the terms of your contract, who was to provide for the insurance?

A Nimpex International.

Q Do you know if Nimpex International did provide for the insurance?

A Yes.

Q Mr. Resnick, I show you this booklet and ask you to look through it and identify it for the Court.

A It appears to be the marine insurance policy for Nimpex International.

Q Is it a signed copy, sir?

A Yes, it's signed.

Q Signed by whom?

A Ben Friedman.

Q Mr. Friedman is whom, sir?

A The president of Nimpex International.

MR. GOODENOUGH: Would you mark that for identification, please?

(Plaintiff's Exhibit 2 marked for identification.)

Q Mr. Resnick, have you handled many shipments of steel on behalf of Nimpex?

A Yes.

MR. WALKER: If the Court please, I've never seen this document before and I assume that counsel intends to offer it, and I would like to have an opportunity to look through it without his asking questions of the witness.

THE COURT: You are entitled to examine the proffered exhibit. You may.

Since there was such extensive discovery in this case, how is it that document was not produced previously?

MR. GOODENOUGH: It was never asked for, your Honor.

(Pause.)

Q Have you handled many shipments of steel that were sold C.I.F.?

A Yes.

Q You are familiar with the commercial significance of a C.I.F. sale where the vendor has provided the insurance?

A Yes.

Q I would ask you to look at this document, Mr. Resnick, and identify it to the Court.

Perhaps, if I take it apart and remove it.

A This is an insurance policy which was typed in the New York office of Nimpex. It covers cargo insurance.

Q That insurance certificate or policy, as you call it, how was that caused to be issued?

A Under the terms of the sale we had. Naturally, we had to supply the insurance. We had to supply proof that the cargo was insured.

So, this document or documents similar to this, would be forwarded along to the consignee, to prove that the cargo was insured.

Q To what policy does that insurance policy or certificate relate?

A Nimpex International insurance policy.

Q Is there a policy number?

A I assume this is the number -- LA-308.

Q Mr. Resnick, what is the policy number of Exhibit 2 marked for identification?

A LA-308.

Q Was the certificate issued pursuant to that master policy?

A In reference to that master policy, yes.

Q Who endorsed the certificate?

A Nimpex International, Harry Brinberg.

Q Does his signature appear elsewhere on that certificate?

A On the front of it.

MR. GOODENOUGH: I would ask this be marked for identification.

(Plaintiff's Exhibit 3 marked for identification.)

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Nimpex International, Inc.

-v-

72 Civ 3779 (EW)

S. S. Polarland, Etc.

New York, New York
June 18, 1974

(Extract)

(Witness: Martin J. Resnick)

(By Mr. Goodenough:)

Q Mr. Resnick, I would ask you to compare Plaintiff's Exhibit 3, the certificate of insurance, with the invoice and tell the Court if in your opinion that invoice and the certificate refer to the same cargo.

A Yes. In my opinion, it does.

MR. GOODENOUGH: Your Honor, I would ask that Plaintiff's Exhibits 2 and 3 be admitted into evidence.

MR. WALKER: Objection. I don't see how it is relevant to the issue here, your Honor.

THE COURT: Well, I would not have seen it, either, until I read the proposed finding by one of the defendants that raised some issue as to whether or not insurance existed or an insurance claim had been filed.

I could not get the significance of that proposed finding but, in the light of that, why isn't this relevant, then?

MR. WALKER: Well, I think as we get into this question with the witness, your Honor -- I think as we do get into this issue --

THE COURT: What is the issue? Somebody enlighten me on it. It didn't come through in the brief until I saw some item, a proposed finding 12, plaintiff Nimpex received payment in full for the shipment which is the subject of the suit, made no insurance claim regarding the subject shipment, did not receive any insurance proceedings regarding the subject shipment, did not authorize any agents to file any claims on its behalf.

MR. WALKER: That is Mr. Sanfilippo's proposed finding.

THE COURT: That has been injected into the case by somebody for some reason.

MR. WALKER: Well, the reason was that on the occasion of the examination before trial, your Honor, that was the testimony of this witness.

THE COURT: What was the testimony?

MR. WALKER: The essense of that proposed finding that your Honor just read. In other words, to the effect that he never made a claim,that he didn't suffer any loss. In other words, he is not the real party in interest - Nimpex.

THE COURT: Suppose the consignee suffered a loss here. The claim is that there is a defect in delivery of one kind or another and, according to this witness's testimony, there was a master policy, as I understand it, against which a certificate of insurance was issued in favor of the consignee.

Is that right?

A Yes, sir.

THE COURT: I'll take it for whatever it's worth. I am not sure at this point whether or not it is relevant but, since I am sitting without a jury, I will take it.

Mr. Sanfilippo, why did you raise the question?

MR. SANFILIPPO: I raised the question for the same reason, sir. This plaintiff is not the proper party in interest here and we propose to show that unless he has an interest, he certainly has no right over against either of these defendants.

I have no objection to the admission of the policies of insurance.

THE COURT: All right.

MR. GOODENOUGH: Your Honor, perhaps to save time, we might move to amend the complaint to add as a party Travelers Indemnity.

THE COURT: You are getting into an area that I am utterly unfamiliar with in terms of the papers that have been submitted to the Court. Did Travelers Indemnity pay the

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THE COURT: And you are the --

MR. SANFILIPPO: I am the defendant Seven Seas.

THE COURT: Now, as I understand -- I say "As I understand"-- from my reading the trial briefs, the Seven Seas and Nimpex have some kind of a relationship; allegedly they are independent corporations. What is the relationship? That is as much as was set forth in the briefs. What is the relationship?

MR. SANFILIPPO: They are interrelated corporations owned by the same interests. They work hand in hand on the purchase and transportation of these steel products.

I have a very simple defense if Nimpex remains as party plaintiff only but if someone else becomes a plaintiff, then I have a much more difficult defense to prove.

First, I would have to discover and, since we only found out ten days ago or seven days ago when Mr. Resnick was examined that Nimpex has no interest whatsoever in this case, we had assumed all along that Nimpex would have an interest but now we know that it does not have an interest.

THE COURT: Mr. Goodenough, I would say that this trial has started now. I don't see how the Court can justifiably permit not an amendment to a pleading; it is bringing in a new party entirely.

And there is a question, at once, of do you

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Now, Plaintiff's Exhibit 2 is the marine open policy issued to Nimpex International under which it issued the certificate, Plaintiff's Exhibit 3, in favor of the consignee of the shipment in question, is that right?

A Yes.

THE COURT: All right.

(Plaintiff's Exhibits 2 and 3 for identification received in evidence.)

Q Mr. Resnick, I hand you three documents. Would you look at them, sir, identify them for the Court and tell the Court if they came from your files.

THE COURT: Do you mean from his files or Nimpex's files?

MR. GOODENOUGH: Nimpex's.

THE COURT: He is no longer with Nimpex, as I understand it. Why don't you get the questions right if you are going to have the papers offered under Section 1732.

A Yes, these were taken from my files.

Q From the Nimpex files?

A From the Nimpex files; and they are copies of the ocean bills of lading covering the shipment of cold rolled coils.

Q Does it cover the shipment referred to in Plaintiff's Exhibit 1?

A Yes, they do.

MR. GOODENOUGH: I would ask that the three bills of lading be marked for identification.

(Plaintiff's Exhibits 4, 5 and 6 marked for identification.)

MR. GOODENOUGH: For the record, bill of lading No. 3 is designated Plaintiff's Exhibit 4; bill of lading No. 2 is designated Plaintiff's Exhibit 5; and bill of lading No. 1 is designated Plaintiff's Exhibit 6.

I would ask the Court to admit these in evidence: Plaintiff's Exhibits 4, 5 and 6.

THE COURT: Any objection?

MR. WALKER: No objection.

MR. SANFILIPPO: No objection.

(Plaintiff's Exhibits 4, 5 and 6 for identification received in evidence.)

Q Mr. Resnick, I show you this document. Would you identify it to the Court, please?

A Photocopy of an ocean bill of lading.

Q What is the number of the ocean bill of lading?

A Two.

Q Is it a photocopy of Plaintiff's Exhibit 5, or does it appear to be a photocopy of Plaintiff's Exhibit 5?

A Yes.

Q Do you notice any difference between the photocopy and Exhibit 5?

A The photocopy has a signature on the bottom right-hand corner.

Q What is the signature?

A J. Reynolds.

Q Does it also have a stamp on the bottom left-hand corner?

A Marked "original."

Q Do you know who J. Reynolds is?

A I would imagine he works for World Shipping.

THE COURT: No. If you know; not what you imagine. You know or you don't know.

A No, I don't know.

MR. GOODENOUGH: I would ask that bill of lading No. 2, with the signature of J. Reynolds, be marked for identification.

MR. SANFILIPPO: I object to that.

THE COURT: I thought bill of lading No. 2 was received in evidence already.

MR. GOODENOUGH: Yes, your Honor, but this is another copy. This one contains a signature. The ones marked in evidence do not.

THE COURT: You have not established its admissibility yet.

MR. GOODENOUGH: Your Honor, these, this document was part of the moving papers --

THE COURT: Won't you ask the witness questions, if you can, to qualify it for admission?

MR. GOODENOUGH: Oh, sure.

Q Mr. Resnick, would you look at this document. Does it relate to the cargo in suit?

A Yes.

Q Is it a photocopy of the document previously marked in evidence as Plaintiff's Exhibit 5?

A Yes.

MR. GOODENOUGH: Your Honor, I would move that it be admitted.

MR. SANFILIPPO: I object to the admission of that copy of the bill of lading, sir. We discovered --

THE COURT: Is Plaintiff's Exhibit 5 the original bill of lading? That was the one you established was kept by the plaintiff in the regular and usual course of business.

MR. GOODENOUGH: Yes, your Honor.

THE COURT: I don't know where this offered exhibit comes from?

MR. GOODENOUGH: May we just have it marked for identification?

THE COURT: It may be marked for identification. Let me see Exhibit No. 5, now.

(Handing to the Court.)

(Plaintiff's Exhibit 7 marked for identification.)

Q Mr. Resnick, I show you this document consisting of six pages. Would you look at it, sir, and identify it to the Court?

A It appears to me to be a booking note for cargo to be lifted on a particular vessel.

Q What is the name of the vessel?

A Polarland.

Q The dates?

A By "dates," you mean the lay?

Q The dates that this booking note applies or covers.

A May 10 to the 25, 1970.

Q The ports?

A From Cleveland, Ohio; to Antwerp, Belgium.

Q Would you look at the last page, Mr. Resnick. Are there any initials or signatures on the last page?

A There is initials on the last page.

Q On whose behalf?

A On behalf of Nimpex and on behalf of Seven Seas.

Q What initials are there on behalf of Nimpex?

A It appears to be M.R.

Q Are those your initials, Mr. Resnick?

A They are my initials. That's my initials, M.R., yes, you know, but --

Q Do you recall signing that document?

A No.

Q Have you ever signed such a document on behalf of Nimpex?

A Well, I've -- I do recollect, as I stated before, that I did see documents like this before, so I have to say that I might have signed it in the past; you know, documents similar to this.

Q You don't recall signing that one?

THE COURT: Are those your initials?

A My signature?

THE COURT: Did you sign those initials?

A No, that's not my signature, no, sir.

Q There are other initials on the last page, are there not?

A Yes.

Q On whose behalf?

A Seven Seas.

Q What initials are they?

A That, I can't make out. I don't know.

MR. GOODENOUGH: May we mark this for identification, please?

(Plaintiff's Exhibit 8 marked for identification.)

MR. GOODENOUGH: We have no further questions of this witness.

THE COURT: Mr. Walker.

CROSS-EXAMINATION

BY MR. WALKER:

Q This document that we were just referring to, Mr. Resnick, did you say that came from your files?

A I did not say that.

Q The answer is no, you didn't say that?

A That's correct.

Q Do you know where it came from?

A No.

Q Is this the sort of contract entered into between Seven Seas and Nimpex, in your experience, with respect to prior shipments?

A Yes, I have seen that entered into before.

Q This same sort of contract?

A Similar to that, yes.

MR. WALKER: I offer this document.

MR. SANFILIPPO: I object to the entry of that into evidence.

THE COURT: There is no foundation for it, Mr. Walker.

Objection sustained.

Q Did you receive the subpoena that was served by my office on Nimpex prior to the trial of this case?

A I received a subpoena on myself.

Q Well, there was a subpoena served on the 13th of June on Nimpex International.

A I am familiar with that, yes, sir, also.

Q And I would like to ask you whether or not you brought the documents called for in that subpoena with you to court today?

A The documents -- after reading that subpoena, the documents that that calls for was presented in my deposition, they was taken as exhibits from all the documents that I had at Nimpex.

Q Well, that's what I thought and that's why I just offered that booking note.

In other words, did you bring that, what you characterized earlier and what has been marked as Plaintiff's Exhibit 8, and what is called for in the subpoena as a "booking note"? Did you bring that with you to court today?

A No.

Q Then, I am asking you again: Did you bring anything to court with you today as called for by this subpoena?

A Nothing that was called for by that subpoena. Nothing in addition to what I have already presented.

MR. WALKER: Can we have this marked, please?

(Defendant Polarland Exhibit A marked for identification.)

Q I show you a document which has been marked Defendant Polarland A and ask you if that document came from the files of Nimpex.

A I don't know if it did or it didn't.

Q Have you ever seen the document before?

A When I gave the deposition. That's when I first saw the document.

Q Did you bring it with you to the deposition?

A No.

Q Did your attorney bring it with him?

A I believe so, yes.

Q You have never seen it?

THE COURT: Did this witness have his own attorney there? You said "his" attorney.

MR. WALKER: I'm sorry, Nimpex's attorney.

A It was a Nimpex attorney.

Q Brought it with him?

A Yes.

Q But this, like Plaintiff's 8, you had never seen before this lawsuit?

A That's correct.

Q And you don't know one way or the other whether it came from Nimpex's files?

A No, I don't.

Q Did you search Nimpex's files in order to obtain any of the documents mentioned in this subpoena?

A Yes. The files that I had with me were the entire Nimpex files, and then we did look further for additional documents which I could not find.

Q Did Nimpex pay for the stevedoring of this shipment that is in suit here?

A Yes

Q It did?

A Yes.

Q And what leads you to answer "Yes" to that question?

A At the time, after I gave the deposition, we were discussing in the office, and I started to check into the fact whether or not World Shipping or -- not World Shipping, but the agents -- excuse me -- the stevedores in Cleveland were, in fact, paid by us.

We checked through the paid bill files and we found out, and after speaking to the agent and speaking to the stevedores, we found out, in effect, that we did pay for the stevedoring ourselves.

It could have been, when I say "paid for by us," meaning Nimpex International.

Q What I would like to know is what evidence was there, documentary evidence was there that you did, in fact, pay for it?

A Well, only the -- only to the effect that I had discussions with --

Q I want to know about documentary evidence.

A Cleveland stevedores. And then I believe that the accounting department had a paid bill--I am not sure--a paid bill or a cancelled check.

Q Did you bring that with you, which is one of the things called for in the subpoena, of course?

A No, I didn't bring that with me.

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Q Can you tell us why the shipper, Nimpex, would pay for the stevedoring or the loading of the cargo?

A Why would we pay for it?

Q Yes. In other words, what obligated you to pay for it?

A Well, we owned the steel and we -- after the cargo was booked, we naturally would pay for all the charges that -- all the costs as well as the insurance that was in the -- let's say was -- all the costs that were involved in loading of the cargo into the vessel and the final transportation to that port.

Q Nimpex made a contract with Seven Seas to carry this steel, is that correct?

A No, I don't know if that would be correct. I know that they made a contract. They asked Seven Seas to book the cargo. I don't know if they made a contract with them. I stated that before.

Q Well, when you say, "They asked them to book the cargo," did they pay any freight to Seven Seas?

A I am sure we paid them.

Q What?

A I am sure we must have paid them some freight, something.

Q Well, do you know?

A No, I don't know.

Q Well, you said, "I am sure."

A Well, I don't think they would have done it for nothing.

Q Well, that's just supposition. Again, you don't have any record of that?

A Not with me, no.

Q Is there a record anywhere of that?

A I don't know.

Q In the normal course, would there be a record if you paid freight for transporting this?

A I would assume there would be.

Q This shipment of steel?

A Yes, I would assume there would be.

Q Well, is there, in the normal course?

A Yes.

Q How is that reduced to writing? What form does it take?

A I would imagine it would have to be an invoice from Seven Seas to Nimpex.

THE COURT: What are you referring to? The stevedoring work or the freight?

A The freight.

Q Do you know who made the arrangements for booking this cargo?

A No, I can't be sure at that time who made the arrangements.

Q Are the officers of Nimpex also officers of Seven Seas?

A I don't know.

Q Do you know if there are any officers, common officers, in other words, of the two corporations?

A No, not that I know of.

Q Not that you know of?

A When you say "officers," no, I don't know.

Q Well, are there any employees who work for both corporations?

A No.

Q As a result of this shipment that took place, you -- meaning Nimpex -- lost no money; is that correct?

A That's correct.

Q You made no claim, is that correct?

A That's correct.

Q Did it come to your knowledge, even, that this cargo or shipment was supposed to have been damaged or delivered damaged?

A No, not until I received notification from Mr. Goodenough.

Q Did you bring with you a copy of the letter of credit?

A No.

Q Did you bring with you any assignment of the insurance policies, for example?

A No, but that's here in the courtroom.

Q Was there an assignment--

A Yes.

Q -- of the insurance policy to the consignee?

A Yes.

Q In other words, you lost all your interest in the insurance policy after the shipment was made, is that correct?

A That's correct.

Q We have an invoice in evidence and isn't it true that this invoice does not reflect the real price of this steel?

A It's not true.

Q Didn't you testify on the occasion of your deposition, that there was a reduction in the price of this shipment?

A Yes, I did.

Q Well, then, the invoice that's in evidence does not reflect the real price, does it?

A No, that's not correct. If you want me to tell you it does -- the original contract price, the original contract price we'd agreed upon was reduced, and the final selling price is the price that appears on that invoice, so that is the price of the goods.

Q When was this contract for the purchase of this steel made? The steel that was shipped in May from Cleveland?

A I don't know the exact date.

Q What, in the normal course -- when would it have been made?

A It could have been --

Q January or February?

A -- it could have been four to six months prior.

Q And isn't it true that the price of steel dropped dramatically from January or February, 1970 to May or June of 1970?

A I don't remember that; I really don't.

Q Do you have any records in your office that would refresh your recollection?

A Not that the market dropped, no.

Q You have no recollection of the market dropping dramatically in Europe during that period?

A I know that the market changed towards the tail end of '70. I don't know as far as how severely it dropped, but I know that it changed, like I said, at the tail end of 1970.

Q Would it shock you if I were to advise you that a ton of hot rolled steel was selling for $100 in April of 1970 in Antwerp?

A Would it shock me?

Q Yes.

A No.

Q The steel that we are talking about here, sold for what -- 152, wasn't it?

A Yes, but this is cold rolled, and you are talking about hot rolled.

Q I know.

A Okay. There is a big difference.

Q What is the difference in price between the hot rolled and cold rolled?

A It would depend upon the conversion costs at the mill. It could be from 50 to $100 a ton. It could be cheaper. It depends on what the mill wants to charge.

Q No, the normal course, there is no specified difference?

A No. At certain times, I was able to buy hot rolled and cold rolled almost at the same prices, and right now, as a matter of fact, hot rolled sells for more than cold rolled.

Q How much more?

A At this moment?

Q Yes.

A I could probably sell --

MR. GOODENOUGH: Objection, your Honor. This is all irrelevant.

THE COURT: Aren't we going far afield?

MR. GOODENOUGH: I'll withdraw it.

THE COURT: It may be interesting, but not relevant.

MR. WALKER: I don't have any further questions of this witness, your Honor, but it's pretty clear that he did not comply with the subpoena.

THE COURT: Was it addressed to the witness or to Nimpex?

MR. WALKER: To Nimpex.

THE COURT: He is not with Nimpex at this time. That's what I understood him to testify when he got on the witness stand here today; that he is with -- he is with an associated -- American Industries Corporation.

MR. WALKER: Yes, that's correct.

MR. GOODENOUGH: Your Honor, Mr. Resnick is here

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Nimpex International, INc.

-v- 72 Civ 3779 (EW)

S.S.Polarland, etc.

New York, New York
June 18, 1974

(Extract)

ROBERT E. RAPPOLI, called by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GOODENOUGH:

Q Mr. Rappoli, by whom are you employed?

A Travelers Indemnity Company.

Q In what capacity, sir?

A I am a claims examiner in their Ocean Marine Division.

Q How long have you been employed by Travelers?

A It's about eight years now. I worked for the company that was purchased by the Travelers and the date of that purchase was, I think, 1966.

Q During that period of time of employment, have you been involved in duties consistent with ocean marine policies?

A Yes.

Q Mr. Rappoli, I show you Plaintiff's Exhibits 2 and 3. Will you look at them, sir, and would you advise the Court from where they were obtained?

A Well, Exhibit 2 is what is called an open policy. It is an ocean marine cargo policy issued by the Travelers Indemnity Company, insuring the Nimpex International, Incorporated.

Exhibit 3 is what we call a special cargo policy or certificate. Authority for issuing these certificates is provided in the open policy form. It is a standard thing. The certificate amounts to a brief, a short policy.

It passes with the documents of title to the goods. It passes with the bill of lading and invoice, and so on, and for shipments going out of the country it is customary to issue -- have the insurance done this way. A certificate would be issued under the open policy.

It is a negotiable document so that when it is endorsed, then it becomes the -- the insurance enures to the benefit of the party who takes title to the goods with the other documents.

Q Mr. Rappoli, where do these documents come from?

THE COURT: To which are you referring?

MR. GOODENOUGH: I beg your pardon.

Q Plaintiff's Exhibits 2 and 3, the open policy --

A I am sure that the open policy was made up in the offices of the Travelers Indemnity Company. It was printed by them and it is typed materially --

Q Did they not come from the records of Travelers Indemnity?

A Oh, yes, yes. They were -- the file was in the San Francisco office of the Travelers Indemnity.

Q Are these documents maintained in the regular course of business?

A Yes.

Q Mr. Rappoli, concerning the shipment covered by the certificate designated Plaintiff's 3, did there come a time that a claim was presented to Travelers?

A Yes.

Q Concerning that shipment?

A Yes.

Q Did Travelers pay that claim?

A Yes.

Q Mr. Rappoli, do you recall the amount Travelers paid on that claim?

A I don't know whether I recall it precisely. It is something like $34,179, something like that.

Q That is the balance of the Travelers folder or file which I hand you?

A Yes. This is at least a portion of the file that was maintained in the San Francisco office for the Travelers.

Q Would you look through it, sir, and refresh your recollection as to what Travelers paid on this claim?

A The payment on the claim, the amount of our draft includes some other items, including --

THE COURT: Includes what?

A Includes some other items, including an agency fee for Webster & Company, who acted as settling agent on the claim.

It includes the survey fee and expenses, I see. The total, excluding Webster's fee, is $34,059.34, U. S.

MR. WALKER: I object to that and I move that it be stricken, your Honor. I don't think that is relevant.

THE COURT: What isn't relevant?

MR. WALKER: The amount paid.

THE COURT: Well, it is no proof of the damages, in the event that a recoveryshould be awarded.

How does that prove the amount of damages?

MR. GOODENOUGH: We are just trying to show that Travelers did pay, your Honor, at this point.

THE COURT: Well, all right.

MR. WALKER: I wouldn't have any objection to that but the reading of figures --

THE COURT: We will receive it on that basis.

Q Mr. Rappoli, was a survey ordered by or on behalf of Travelers concerning this loss or this claim?

A Yes.

MR. WALKER: I don't believe there was an answer to that question, was there?

A The answer is yes.

Q I show you a group of papers. Would you look at them, sir.

What are these papers, sir?

A It appears to be a survey report.

Q From your view of these documents, by whom was the survey report ordered?

A I think at the beginning it says, SPRL Boschmans Thoumsin, Antwerp.

Q And it is signed or it is signed on behalf of?

A On behalf of --

MR. WALKER: I can't hear the witness, your Honor.

A The signature doesn't appear here but the place for signature has the name van Peborgh & Company, SPRL, Claims Agents, the Travelers Indemnity Company, Policy 7335 --

THE COURT: You will have to raise your voice. It is very difficult to hear you.

A Policy 7335LA308, Nimpex International. That all appears under the place for signature.

Q Mr. Rappoli, what is the policy number of the certificate?

A The certificate number is 9335. The policy number, open policy number is LA308.

Q Does the survey report refer to those two documents, Plaintiff's Exhibits 2 and 3?

A Yes.

MR. GOODENOUGH: Your Honor, I would offer the survey report -- I ask that it be marked for identification.

(Plaintiff's Exhibit 10 marked for identification.)

Q Mr. Rappoli, what documents are necessary for Travelers to pay a claim?

A Well, an original bill of lading, normally, endorsed; an invoice, delivery receipts, survey report usually; and in the case where an insurance certificate has been issued, that would be one of the documents.

There might in some cases be other things but those are the main things.

MR. GOODENOUGH: I would offer the survey report in evidence.

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MR. WALKER: Objection.

MR. SANFILIPPO: I also object, your Honor. There has been no foundation laid for the authenticity of that report.

MR. WALKER: We have the surveyor sitting in the courtroom, your Honor, and besides that, the survey as offered is incomplete.

The photographs mentioned and other attachments are not included. We are being offered an incomplete document at best, which is another ground for our objection.

MR. GOODENOUGH: Your Honor, we will produce the photographs, if we may.

THE COURT: It is an incomplete document now. It has not been authenticated.

MR. GOODENOUGH: I have no further questions at this time.

CROSS-EXAMINATION

BY MR. WALKER:

Q Sir, did you pay a claim on this shipment of steel that we are talking about here, which was shipped under these bills of lading, 4, 5 and 6?

When I say "you," I mean, of course, Travelers.

A Yes. Looking at these documents, I am not certain I can say. I think the invoice would show the totals, perhaps, and the weights. This certificate is in terms of weight.

THE COURT: I don't understand. You are not certain that you can say what?

THE WITNESS: That we paid for the shipments covered by those bills of lading, sir.

Q Did you pay a claim made under this invoice which has been marked Plaintiff's Exhibit 1?

A Yes.

Q And to whom did you pay that claim?

A The claim was paid by our agents on our behalf.

Q I didn't aks you by whom it was paid. I want to know to whom it was paid?

A Well, I am not certain to whom their payment was made.

Q Your records don't reflect that?

A I think they do, yes. I don't have them right now in front of me.

Q Well, do you have them with you in the courtroom?

A I think we have --

Q At your seat or does your attorney have them?

A I think we have --

THE COURT: What is Plaintiff's Exhibit 1?

MR. WALKER: That is the invoice, your Honor.

Mr. Goodenough, do you have anything that would help this witness answer that question?

MR. GOODENOUGH: Yes.

(Documents handed to the witness.)

Q Does that help you, that document that was just handed to you?

A Yes. This is a check issued by W.K. Webster & Company, who are our settling agents.

Q And made payable to whom?

A Made payable to Boschmans Thoumsin.

Q Who?

A Boschmans Thoumsin.

Q Do you know who they were or are?

A They are identified in the survey as the persons who called in the survey. I think they are subagents of Webster but I'm not certain about that.

Q Webster is the paying agent for Travelers, is it not?

A That's right. It was endorsed on the back by the payee.

Q Who was the payee again?

A Boschmans Thoumsin.

Q And you think that Boschmans Thoumsin is an agent of your paying agent, Webster?

A I think that is so. I am not certain what their role is.

Q Then you did not pay the claim to them, if they are the paying agent of your subagent?

A No, that's right.

Q Well, then, this document doesn't help you, then, really to tell us who the claim was paid to, does it?

A I am not sure what the answer is because it's been endorsed over to other parties on the back.

Q Well, in other words, you still can't tell us who received payment from Travelers for this claim, can you?

A I guess not.

Q Well, is there any document that you can go to your office and get and produce in court here so that we will know who actually got paid for this alleged damaged steel claim?

A I think that is the document; that is the only draft there is, and that has been endorsed over ultimately to the claimant.

Q Yes, but that document doesn't show who the claimant was, does it?

A I think it does, on the back.

MR. WALKER: Then we better mark it for

identification and ask you another question or two.

Would you mark that, please.

(Defendant Polarland Exhibit B marked for identification.)

Q Have another look at it now and see if you can tell me the name of the claimant which I assume would be the person who received the funds from the Travelers in satisfaction of the claim they made for the allegedly damaged condition of the steel.

A The claimant, as I understand it, is Fabrique De Fer De Maubeuge.

Q Well, then, that would be the consignee, would it not, and I ask you now to refer to Plaintiff's 4, 5 and 6, the bills of lading.

A Well, this says "notified party" on the bill of lading, yes.

THE COURT: What?

A There is the party to be notified.

I didn't look at all of them. I assume they are the same.

MR. WALKER: I have no further questions of the witness, your Honor.

AFTERNOON SESSION

1:20 p.m.

THE COURT: All right. Proceed.

(Ike Trabout was sworn as the French interpreter by the Clerk of the Court.)

GILLES HEUREUX, called as a witness by the plaintiff, being first duly sworn, testified through the French interpreter as follows:

DIRECT EXAMINATION

BY MR. GOODENOUGH:

Q Mr. Heureux, how are you employed?

A For the company by the name of Mouzon.

Q In what capacity are you employed?

A I am an expert.

Q An expert in what, sir?

A In merchandising, mainly in merchandising.

Q What kind of merchandise do you deal in?

A All kinds of merchandise, but mainly steel.

Q When you say you deal in steel, in what capacity do you deal in steel?

A I deal as an expert.

Q Do you buy and sell steel?

A No.

Q Do you survey steel?

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A Yes.

Q You are a steel surveyor, then?

A Yes, but I would say, if you permit me, that expert and surveyor must be just about the same.

Q For how long have you been a steel surveyor or expert?

A Eight years.

Q Mr. Heureux, would you please give us some idea of your background and education?

A I have made my studies in a maritime school, inasmuch as I am a captain. The diploma that I hold is the equivalent in English of a master mariner.

Q Have you ever sailed?

A Yes, sir.

Q For how many years?

A Approximately 14 years.

Q Have you ever held any license or certificate?

A Yes, you see, when you have a captain's diploma, you also have to go to school of navigation, navigation school, and you have a certificate, yes.

Q What certificates have you held?

A First of all, I had the diploma of an aspirer. If you wish, we call it apprentice -- we may call it, also.

I had to go to see to navigate, in order to qualify to the diploma of third officer, what you call "third officer dimploma."

Then, continued to navigate after that, and come back to school and study, in order to qualify for a diploma of first officer.

And then, after that, I continued also studying in order to obtain the diploma to navigate.

MR. WALKER: Your Honor, the defendants are prepared to concede the expert's qualifications.

Q Mr. Heureux, in June of 1970, did you have occasion to survey a cargo of cold rolled steel on board the SS Polarland?

A Yes.

Q Did you go aboard the SS Polarland to make that survey?

A Yes.

Q Did you observe the cargo in suit aboard the SS Polarland?

A Yes.

Q Were you alone when you conducted that survey?

A No.

Q Who else was with you, sir?

A The surveyer who intervened in behalf of the ship.

Q What was his name, sir?

A Mr. Duytschaever.

Q Mr. Heureux, did you make notes of what you saw aboard the ship, the SS Polarland?

A We went with the captain in the ship's hold to inspect the merchandise, but inasmuch as it is dangerous down there, pieces of metal flying all over, we decided, then, to wait until the merchandise is unloaded at the pier.

Q Mr. Heureux, did you prepare a report?

A Yes, I have established a report.

Q Do you have a copy of that report with you, sir?

A Yes, there is indeed. I did make a report. However, prior to that, I prepared a confirmation which I sent to the company --

THE WITNESS: No, to the opposite party.

THE INTERPRETER: I am sorry. I would like to apologize, not to the company, but to W. B. Duytschaever.

A That is the expert that came for the ship, in behalf of the ship.

Q May I see the copy of the report?

A Yes, you may.

You have with you, sir, the confirmation as well as the report.

MR. GOODENOUGH: May I have this marked for identification?

xx (Plaintiff's Exhibit 11 marked for identification.)

Q Mr. Heureux, who retained you to make a survey report on the cargo here in suit?

A The company van Peborgh.

Q Did you prepare a report of your survey for van Peborgh?

A Yes.

Q Do you have a copy of it with you, sir?

A I think you might have it there.

After the confirmation, which is on top, you have the report which is included.

Q If you know, Mr. Heureux, who retained van Peborgh to have a survey conducted?

A I have the name of the company and I am going to provide it to you now. The name of the company is Boschmans Thoumsin and Company.

Q Mr. Heureux, who are Boschmans Thoumsin and Company, if you know?

A These are the people that represent, at Antwerp, the final consignee; that is, the buyer. Or if you want to call it, you can call it "forwarding agent."

THE COURT: Whom does the witness represent?

A We are an independent company, your Honor, which was or were appointed by van Peborgh & Co.

Q Mr. Heureux, when you say Boschmans Thoumsin were the forwarding agents for the ultimate consignee, who was the ultimate consignee, if you know?

A The steel factory of Maubeuge. It is in French. It's the factory of metal of M-a-u-b-e-u-g-e: Fabrique de Fer de Maubeuge.

Q Why did you furnish a copy of your survey report to Mr. W. B. Duytschaever?

A I am not giving him a copy -- not a copy of the report. I am sending him a confirmation.

THE COURT: Sending him what?

THE INTERPRETER: A copy of the confirmation, your Honor.

A If I may be permitted to explain --

THE COURT: Yes.

A We made the survey and discovered the damage. We have jotted down all the information with respect to the damage. Once everything was taken down, then I prepared the report and we sent it to this expert there.

Q Did the ship's P and I expert also make notes?

A Yes.

Q Did he furnish you with a copy of the report, of his report?

A No.

Q Mr. Heureux, what is the significance of a confirmation?

A That is in order to avoid in the future, any extension of the damages --

THE WITNESS: No, no.

A That is to say, if I say on my report that this merchandise is damaged, then they would not come back two years later and say: this was not damaged; this is the purpose.

Q Well, Mr. Heureux, if the P and I surveyor disagreed with your report, would he respond to you? Is that the normal practice?

MR. WALKER: Objection, your Honor.

THE COURT: Well, we'll take it for what it's worth.

A It so happens that, at times, we also were in behalf of P and I and if we don't agree with the expertise, then we say we don't agree also, so we send him the answer.

Q What is the practice with regard to sending confirmations?

A Well, here is how it works: At Antwerp, in

Belgium, they want us to take a survey of the damages as they are. Then we prepare the confirmation and I sent the original to the surveyor.

Q Did you get any response from the surveyor?

A Never.

MR. WALKER: Never?

THE INTERPRETER: Never.

Q Mr.Heureux, you said earlier, you observed the cargo aboard the vessel; is that true, sir?

A Yes.

Q Did you observe the cargo as it was discharged from the vessel?

A Yes, absolutely.

Q Would you describe the manner of discharge from the vessel?

A It is evident that when the merchandise is in the ship's hold, you cannot use a "forklift" as we call, so you have to take it out first with a crane -- with a land crane, to which crane you attach special hooks, what you call here "flat side hooks."

Then you transport them to the pier, land, and from there you take them with a forklift truck to put them on the storage or the hangar.

When you manage to make a big space or a hole in the ship's hold, there you also use the forklift to lift.

Q Was any particular effort made to discharge the cargo so as not to cause damage to the cargo?

A As a matter of fact, I have mentioned this in my report. I stated there that under these circumstances you cannot blame, in this particular case, the stevedoring company. They have performed their work and did good work without any damage.

Now, I do not wish to make statements and say things that you will come later and tell me that I said. What I am saying here is, the stevedoring company, if they did damage to merchandise which had already been damaged before, you cannot come and say to the stevedoring company, "You have done all the damage yourself."

THE COURT: What stevedoring company are you referring to?

A The "Hassan et Cie."

If you permit me, I'll give you the name.

THE COURT: You don't have to look at that. Was it the stevedoring that did the loading at the original port or the unloading?

A Well, I don't know, but they were at the port of Antwerp, so I take it, it's unloading.

THE COURT: That's what I am asking you. You are referring, then, to the unloading.

A Yes, your Honor, unloading.

Q Mr. Heureux, do you recall the berth used by this ship to discharge its cargo?

A I think 492, 494; it's right there.

Q Is this berth a covered berth?

A That is to say, that these berths are covered in two ways:

These berths are what you call "steel terminals." That is to say, first you have the pier, what you call it; then you have the cranes; and then you have the hangar with the sliding cover, if you wish, that is movable -- you can open and close.

That is to say, if you unload from the ship, the crane picks the merchandise and puts it directly to the hangar.

And right after that, about 150 meters, approximately, you have a closed end hangar, just with a door, and you can put the merchandise, then, inside.

Q Mr. Heureux, did you observe this cargo at any place other than Antwerp?

A Yes; at final destination.

Q Did you note the condition of the cargo at the final destination?

A We have inspected the merchandise and the cargo that is at final destination and found it to be the same as we had found at Antwerp.

Q Mr. Heureux, did you take photographs of the cargo?

A Yes.

Q Mr. Heureux, I give you a series of approximately 26 photographs. Would you look at them, sir.

A Yes.

Q Can you identify them, sir?

A Well, as a matter of fact, they are marked on the back; and each time they used to unload, we were taking pictures as we were going on. These are the pictures of the merchandise at the Polarland.

Q These are the photographs you took, sir?

A Yes.

MR. GOODENOUGH: I ask they be marked for identification.

(Plaintiff's Exhibit 12 marked for identification.)

Q Mr. Heureux, in what city did you take those photographs?

A Antwerp, in the closed hangar.

MR. GOODENOUGH: I would ask that Plaintiff's Exhibits 11 and 12 be admitted into evidence.

THE COURT: Show them to counsel, please.

MR. WALKER: It appears that this is a series of reports but, in any case, I have no objection to the photographs. I do object to the reports. The witness is here.

THE COURT: I think you are right. I think he should testify, but we might receive the report after he testifies as an aide memoir.

Is there any objection to that?

MR. WALKER: No.

(Plaintiff's Exhibit 12 for identification received in evidence.)

MR. GOODENOUGH: Your Honor, the report is a 37-page report, and it deals with each coil with some degree of specificity. By the date of the report, June 30 of 1970, a copy was submitted to owners P and I representative. In addition, the survey itself was sent to van Peborgh; and the van Peborgh report, which was not admitted by the Court, was grounded on this particular report.

THE COURT: But you have a witness here who made a site inspection. Counsel can cross-examine him, but apparently you are referring to another report by a person who is not present.

MR. KENNEDY: If I may, the Plaintiff's Exhibit 11 for identification, actually consists of two documents -- one is a 30-some-odd-page detailed report concerning the condition of the coils; it was made by the witness himself.

It may be that technically we have yet to have him state that he issued the document in the regular course of business, but I think we can clear that up.

THE COURT: Counsel have no objection to that report being received in evidence after the witness has testified. In other words, that report, after he's testified, will be received as I suggested, as an aide memoir. Nobody expects him to go down in detail with respect to each item and testify.

He may make a general statement as to what he found.

Is there any objection to that?

MR. SANFILIPPO: I would have no objection, subject to my ability to cross-examina~~tion~~e.

THE COURT: Of course. There is no problem here.

MR. KENNEDY: I didn't think there would be a problem. I thought that the document should be admitted for what it is, a document --

THE COURT: No. Let him testify, generally, what he observed. You are relying upon it to establish your claim.

As I say, nobody expects him to go down each separate item and specify what he found on each. The report will be received for that purpose.

Q Mr. Heureux, the report marked Plaintiff's 11, and the photographs received in evidence, Plaintiff's 12, do they each relate to the same cargo aboard the Polarland?

A Yes.

Q Mr. Heureux, with regard to the damages found to the cargo at Antwerp and noted in your record, does this report accurately reflect the extent of the damages found by you?

A Yes.

Q Could you briefly describe the damages you found to the cargo?

A Well, first of all, the heavy damage is called "ovalization." First of all, you also had damages not only in the packing, but under the packing, around the packing and on the windings, also; the windings, such as, either they were squeezed or there were cuts or incisions in the cover metal or the sheet metal, the contents.

Q Mr. Heureux, based on your experience as a surveyor and a mariner, do you have an opinion as to the cause of the damages you found to this cargo?

A As I stated in my report, the first damage was caused during the process of lying down, laying down the merchandise at the unloading, first -- at the loading.

THE INTERPRETER: Forgive me, it's my mistake. I would like to correct myself, your Honor -- at the loading point; loading, yes.

A And, of course, because traveling in a ship, the ship has the tendency of moving at sea and, therefore, you have the coils either hitting each other or a friction, causing one to go against the other. And, also, they could be squeezed or crushed --"crushed" is the word. That's the exact word: "crushed."

Q Mr. Heureux, do you know what was done with the damaged cargo?

A First of all, part of the shipment, or the cargo if you wish, was received by the final consignee. With respect to the balance--which had to do with mechanical, local mechanical damage--the final consignee. As a result of the meetings which we had, the final consignee, without help, managed to, while negotiating, to accept this with a bonus.

Q Mr. Heureux, would you explain the term "bonus"?

A Yes. I am going to explain the word "bonification." It means the lesser value of the merchandise, which originally cost prior to the damage; then, the allowances you make, plus the expenses that you will have incurred to correct the damages on the sheet metal -- I think we said before -- to correct --

MR. WALKER: I think the record should show that the witness is correcting the translator's translation of his answer, which is precisely what occurred just now.

THE COURT: What did the witness say, Mr. Trabout?

A Well, it's not exactly lying this, referring to my translation, not to the remarks by counsel. However, it is as follows:

You are dealing here with coils and the ultimate destination of the coils to be galvanized -- yes, that's it.

That remains also. The galvanized sheet metal. If you have sheet metals on these coils, therefore, you will have to cut them -- you will have to cut them, yes -- that's it. You have to cut them, and there you have the cost involved in cutting those sheet metals.

Q Mr. Heureux, what was done with the coils that were unacceptable to the consignee?

A Well, at any rate, this is the practice at Antwerp: either you allow a depreciation to be accepted by the final consignee, or, if the final consignee refuses this agreement, then we sell the coils as they are.

Q With regard to the coils that were unaccepted or unacceptable to the consignee, what disposition was made of them?

A We sold them.

Q Are the circumstances of that sale reported in your survey?

A Yes.

Q For the balance of the coils that were accepted by the consignee, was a depreciation allowed?

A Yes. They finally agreed to a final depreciation.

Q Is the depreciation allowance made part of your survey report?

A Yes.

Q Just one more question, Mr. Heureux:

Concerning the practice in Antwerp of confirmation of survey reports, have you ever received a reply from a P and I surveyor disagreeing with your survey?

MR. SANFILIPPO: I object, your Honor, to the question. He states: Is it a custom, is it a custom? And then he states it as a statement of fact: whether or not it's ever been rejected. I don't see the tie in between the two.

THE COURT: Clarify your question, please.

Q Mr. Heureux, you testified earlier that it is the custom at Antwerp for a cargo surveyor to send a copy of his survey report to the P and I surveyor.

A We send the confirmation, not the report; just the confirmation.

Q But the confirmation consists of a copy of your report, does it not?

A Yes, but this concerns the damages only.

Q Now, is it the practice at Antwerp, for a surveyor receiving such a confirmation, to notify the cargo surveyor of any disagreement he may have with that confirmation?

A If they sent me something with which I am not in agreement, then I answer them.

Q Have you ever received an answer from a P and I surveyor on any cargo survey or confirmation you have sent?

MR. SANFILIPPO: Objection, your Honor. It's immaterial, what he received from others.

THE COURT: Aren't we concerned with what went on in this case? What difference does it make what went on in other cases?

MR. GOODENOUGH: Just custom.

THE COURT: Put the question directly. After he sent the confirmation, did he hear from the party to whom he had sent it?

Q After you had sent the confirmation, did you hear from the party to whom you sent it?

A No.

THE COURT: Again, to whom did you send it?

A To Mr. Duytschaever, the expert of the P and I; the P and I expert.

Q Concerning the depreciation allowance and the salvage sale reported in your survey report, in your opinion, were they fair and reasonable?

A What are you talking about? The damages?

Q The damages.

A Well, I cannot state, sir, whether -- I don't understand whether you are saying whether the damages are reasonable or the allowance made to the damages reasonable. What are you referring to?

Q The allowances made to the damages.

A Yes. The answer is yes.

Q When I say, "your survey report," I also refer to your confirmation.

A Yes.

MR. GOODENOUGH: I have no further questions.

I offer Plaintiff's Exhibit 11 in evidence, your Honor.

MR. WALKER: No objection.

(Plaintiff's Exhibit 11 for identification received in evidence.)

THE COURT: Mr. Walker?

How long will you be, do you think, Mr. Walker?

MR. WALKER: About 45 minutes.

THE COURT: Then why don't I call my motion calendar, first, since you are going to be 45 minutes, and then we'll see what happens.

(Recess.)

(Trial resumed.)

THE COURT: Proceed, please.

CROSS-EXAMINATION

BY MR. WALKER:

Q Mr. Heureux, with respect to the damage of these coils, isn't it correct that this damage could have occurred either before it was placed aboard the ship or during the time it was on the ship or sometime after it was discharged from the ship and before you saw it?

A Once again, as I stated before, I am going to repeat:

If, upon loading of the coils, there is a damage of three inches to the coil, and the stevedoring company unloading. adds three more inches to it, I cannot hold the stevedores responsible for the additional three inches damages that are incurred. Now, I am not talking about upon loading or before loading. I am talking at destination.

Q I understand that, but did you see any of this damage inflicted on this cargo?

A When, sir? During the unloading?

Q Yes

A No.

Q In other words, all of the damage is damage that you observed after it was discharged, is that correct?

A No, sir. We have noticed the damages in the hold, in the hold and, seeing that the danger that might incur in the hold, we decided to unload at the pier.

Q Didn't you testify that you didn't go down into the hold?

A You did not ask me. I said I was on board ship, but I was in the hold.

Q I understood you to have testified that you didn't go into the hold because it was too dangerous; that you were on the ship, but you didn't go into the hold.

A I can ask the stevedore to stop for a few minutes in order to observe the damages, but I cannot ask the stevedore to stop the whole unloading process for me to watch the damage.

Q I understand.

When you went into the hold, entered into the hold of the Polarland, how high were these coils stowed? One, two or three levels high?

A May I refer to my report?

Q Yes. Well, you better refer to something in evidence.

MR. WALKER: Let the record show that the witness is referring to Plaintiff's 11.

Q Sir, don't refer to anything else.

A All right. Here we are:

In the report on page marked "Suite No. 2 of Exhibit 11," here it is on the -- here you have "Storage No. 2, Tier 3 high from side to side."

Q That's all I wanted to know.

How long did you stay on board the ship?

A We stayed on board -- I say we stayed on board -- now, I don't mean by that that I stayed on board during the entire unloading operation. I would go down, inspect a coil, come up again and go down again.

Q Did you see any ovalized coils in the upper tier?

A Are you referring to the upper tier?

Q That's what I said.

A Personally, I did not see.

Q Did you, personally, see any ovalized coils in the second tier?

A I do not recall.

THE COURT: How do you describe "ovalized"? What is the meaning of the word "ovalized"?

A That they no longer have a round form, your Honor, or a round-shaped form; no longer do they have a round form. It is oval.

THE WITNESS: Egg shaped.

A Or an egg shape. Ovalized or egg shaped.

Q Did you observe any ovalized coils of the sheet steel in the second tier? You personally?

A I don't remember.

Q Did you personally observe any ovalized coils in the lowermost tier?

Just answer yes or no.

A Yes.

Q And how many ovalized coils did you observe?

A Perhaps five, six.

Q And you said this afternoon, in answer to Mr. Goodenough's question, that the majority of the damage was ovalization; did you not?

Just answer yes or no, again.

A It may have been misinterpreted. However, what I meant to say is: the majority was due to ovalization. The most important damage -- yes, this is what I wish to be translated.

Q Now, am I to understand you correctly, to be testifying, that you observed five or six ovalized coils out of these 299 coils?

A Which were still in place in the tier.

Q In the lowermost tier.

A Yes.

Q Is it true that ovalization of coils such as we are talking about here, can occur -- this ovalization can occur in two ways: either by dropping the coil or by squeezing the coil with something heavier; is that correct?

A Yes.

Q Those are the two and the only two explanations for ovalization. is that correct?

A Yes.

Q Am I correct in stating that according to your survey report, after you had an opportunity to look at all the coils, you found only 16 to be ovalized?

A There are 16 that were so, but you have here in the reports others slightly ovalized, slightly ovalized.

Q My study of this survey indicates 16 coils to have been mentioned as being ovalized, whether slightly or extremely. Now, correct me if that is wrong. Are there more coils than 16, whether it be slightly or extremely, are there more than 16 coils that were ovalized?

A There are more than 16.

Q There are more than 16?

A Yes.

Q How many are there?

A You have to count them.

Q Do you know?

A No.

Q You don't know?

A No.

Q When the 16 were rejected, who made the decision that they should be rejected, you or the consignee?

A We never, as experts, make the decision as to rejecting, or what have you. It is always the ultimate consignee.

A No. At the time when you questioned me in -- this is in January when you questioned me. At that time, that was in behalf of the shipper who had given me the price.

Q In other words, in answering those questions last year, in February, you were giving me the information that the shipper gave you and not what you knew of your own knowledge?

A The fluctuation of the steel, I learned them through a third party, through other people.

Q And you weren't aware of a falling price of steel in the spring of 1970? Is that correct?

A Yes, I was aware that there was a fluctuation, a downward fluctuation, yes.

Q In the price of steel in the spring of '70?

A Well, I am referring to the end of '69 and mid-'70, there was a decline.

Q In the price of steel.

A Yes, but not knowing which.

Q Thank you.

Now, let's talk about how much a coil must be ovalized in order to make it rejectable, if you will. Do you have an opinion --

MR. WALKER: Have you asked the question?

THE INTERPRETER: I did, but do you want the answer?

MR. WALKER: That wasn't a question. That was the preface to the question.

THE INTERPRETER: Sorry.

Q The question is: Do you have an opinion as to how much a coil must be ovalized in order for it to be objectionable?

A There are no defined rules. You have to see each coil and then decide.

Q Do you remember being asked questions similar to that in February of last year?

A Yes.

Q I want to ask you if you recall being asked this question and giving this answer last year when you testified in another case.

MR. GOODENOUGH: Your Honor, I object. Why doesn't Mr. Walker simply show him the questions that he allegedly put to the witness in prior testimony, and let him see if he --

MR. WALKER: Because this is in English and he is speaking in French, I understand, although I might point out that he testified fluently in English for about two hours last year. That's why I didn't show it to him;

this is in English, the transcript.

MR. GOODENOUGH: Well, he wrote his report in English, Mr. Walker. He has some grasp of English; that's obvious.

MR. WALKER: I didn't raise the "English" issue. You asked why I didn't let him read it and the reason is, because we are using a translator. That's why I didn't do it. This is the customary way of impeaching witnesses in this court.

THE COURT: Go ahead.

MR. WALKER: Do you understand my question, Mr. Interpreter?

THE INTERPRETER: No. You said last year, in the month of February, and you asked the questions.

MR. WALKER: I wanted to know if he recalls being asked this question and this answer, and I'll now read them.

THE COURT: Being asked this question, and giving this answer.

MR. WALKER: That's exactly what I meant, yes, your Honor.

Q "Q You have made a statement earlier that ovalization was in your definition: more than two inches out of round; is that correct?

"A No, they are always, even with two inches, they are out of round; but normally -- if I am acting for a receiver and if the receiver asks me: 'Do you think it is necessary to give an allowance for such ovalization?' we say 'Not,' but of course it is our opinion."

A Yes. Yes, I recall this, absolutely, but then we were dealing with other merchandise.

Q "According to the information I have picked off the survey, of the 16 coils that were rejected, 9 of them were ovalized less than two inches."

Does that square with your recollection?

A No. I don't believe -- I don't think that we gave information with respect to the coils that have been sold. We did not give the size of the ovalization.

Q "Well, I have the coil number and I have the exact dimensions. In other words, for example, let's just take one -- Coil No. 3909-6.

"Then I have measurements for that of 630 millimeters by 580 millimeters, which means that there was ovalized to the extent of 25 millimeters, which is about one inch."

A I don't remember that and I do not know where you got your information from.

Q I got it from a survey report.

A Perhaps, but when I see something, I give you my opinion when I see the thing. I don't tell you anything else afterwards.

Q Well, I am saying that 9 of these 16 ovalized coils were ovalized less than two inches.

A The other portion states that.

THE INTERPRETER: Sorry, excuse me. It could be the other side instead of the other portion. The other side states that; the other side, not the other portion. I want to correct myself. It means the same thing. The word used in French means the same thing, but depending on the context.

Q Is it possible to jack up an ovalized coil; in other words, to jack it back into the round? It's ovalized and you use a jack, and can you make it round again?

THE INTERPRETER: Now I understand.

A It could be possible that they do that, but normally, it does not work.

Q Have you ever seen it done?

A Yes.

Q Have you ever seen it done successfully?

A The stevedores at Antwerp attempted to do that upon the unloading, in order to hide --

THE WITNESS: Not unloading; during loading.

THE INTERPRETOR: Forgive me.

A --in orde to hide -- during loading -- the damages and their responsibility.

Q Have you seen it done successfully by the stevedores? The Antwerp stevedores.

A It always lacks something.

Q Pardon?

A It always lacks something. There is something of the ovalization always remaining.

Q Is there any other way that you can straighten out the ovalization without rejecting the entire coil?

A You can do it as you stated before. You try to raise it, but it doesn't work.

Q Can't you also squeeze it with something, with a forklift truck, for example?

A Now, look here: We are not here trying to hide something, doing in behalf of the consignee, or trying to straighten out something that is supposed to be received in good shape. We are not trying to do that here.

Q How high are these coils? The outside diameter? Four feet?

A Just a moment, please. Bear with me, if you please.

Q Yes.

A About a meter and 20 centimeter; that would be approximately four feet.

That is as much as I can remember.

Q About four feet?

A Yes. As much as I can recall, this is approximately four feet.

Q And it's your testimony that a coil four feet high, if it's out of round a matter of only a couple of inches, it has to be rejected; is that your testimony here today?

A Did I say that these coils that were rejected had two inches of ovalization?

Q No, you didn't -- I don't believe you did, but your record here does; your report.

Please don't look at that. You must deal with what is in evidence -- Plaintiff's 11 now is given to the witness, and I wish you would turn now to page 15 -16.

Now, there were certain coils under bill of lading No. 1. Was not Coil No. 3913-4 one of the ones rejected?

A You can have ovalization, but then you can have a crack in the sheet metal and there is where you could have the ovalization.

This is what I said before, that you have to look at the coils in order to see whether they are valid or not.

Q I know, but we can't look at the coils now, because they are not here.

I am referring to the record that you prepared for us, now.

I am going to read some numbers here and I want you to tell me, isn't it true that the following coils were rejected as being among the 16 that were rejected: 3913-4; 3914-7; 3914-9; 3914-18 --

THE INTERPRETER: Just a moment, please. He doesn't have it.

MR. WALKER: Just translate.

THE INTERPRETER: I did.

Q -- 3914-37; and isn't it further true that --

THE COURT: Give him a chance to look at it. You are asking the witness the question and you don't give him a chance to look at the document.

MR. WALKER: Your Honor, I've asked the witness not to look at records not in evidence.

THE COURT: I don't know how he can give you the answer to the questions without looking at a document.

MR. WALKER: He has to look at the report. I

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don't mind him looking at the report. I have no objection to that. That's the only thing in evidence. I don't know what he is looking at now. He is looking at something else.

THE COURT: I thought he was looking at the same document you have in your hand.

MR. WALKER: No. He is looking at some scratched notes here. I don't know what they are.

THE WITNESS: This is made from this one.

Q I know, but you see, we have to deal with the documents that are in evidence and that's the only thing I've been able to refer to. I can't refer to your notes because I don't have copies of those.

A You prefer that I answer if I don't remember anything.

Q No. I want you to look at the report, and that's why I handed you the report and that's why I asked you not to look at anything else.

A This took place four years ago, and I am not capable of answering you things that took place four years ago with accuracy.

MR. GOODENOUGH: Your Honor, I would suggest that the witness is permitted to refresh his recollection in looking at his notes. It's four years and if Mr.

Walker objects to using his notes and he wants them put into evidence, Mr. Walker should do so.

THE COURT: I think we are discussing two different subjects. If the witness, in answer to the question, indicates he doesn't recall, he may refresh his recollection from any document that he has that will refresh his recollection, whether it's in evidence or not; but Mr. Walker, as I understand it, was questioning the witness with respect to an exhibit which was received in evidence and I think it's the exhibit that I referred to as an"aide memoir."

Is that correct?

MR. WALKER: Yes, your Honor.

THE COURT: And he is asking questions with respect to specific-numbered coils; because Mr. Walker, as I understand it, contends that there were 16 and he is questioning with respect to those 16.

Is that right, Mr. Walker?

MR. WALKER: Yes.

THE COURT: I don't see what the problem is. He is questioning the witness about his own report.

You may proceed, Mr. Walker.

Q Did you refer --

THE COURT: I just want to add one other thing.

I did mention that, while I would allow the witness to testify in general terms as to the conditions that he found with respect to portions of the shipment, when the report went in, assumedly, it related to specific items; and it therefore follows, that counsel have a right to question him with respect to those specific items. That's about all there is to it. I don't know why we are spending so much time on it.

Q Page 15 and 16 of your report, do you see the coils there that I read off, the numbers of which I read off earlier?

A Yes.

Q Now, are there also dimensions showing the degree of ovalization mentioned?

A Yes.

Q Isn't it true that, for example, Coil 3913-4 was out of round 15 millimeters?

A Thirty millimeters. I have here thirty millimeters, rather than fifteen.

Q I am very sorry. You are quite correct. Thirty millimeters.

Now, can you convert that to inches for us?

It's about that much, isn't it?

THE INTERPRETER: Do you want the answer?

MR. WALKER: I thought he said "No."

THE INTERPRETER: He said, in French, one-and-a-quarter-inch, approximately. Yes, an inch-and-a-quarter, approximately.

Q To 3914-7, how many?

A Fifty millimeters.

Q And how much --

A Two inches.

Q And the next one, 3914-9?

THE WITNESS: On which page?

Q The same page, 15 or 16; I am not sure which.

A Oh, yes, I have it here.

Q How much out of round was that?

A I think it's 13 millimeters or it looks like -- it's 630 x 600, I think.

Q Yes, that's right, 630 x 600.

So how much out of round would that be? It would be half of that. It would be out of round half of that amount, right?

A Of course, it has nothing to do, as I stated before -- of course, you are going to tell me we are not dealing with the coils; but I have to see the coils, and you are going to tell me the coils are not here, of course.

Q That's right.

A You cannot base only on the numbers. You have to see the coils, sir.

Q I know, but --

A This is just for the records.

Q All of the coils under bill of lading 1, that were rejected as being ovalized to such an extent that they were rejectable, were all out of round less than two inches except for 3914-40; isn't that correct?

A Yes.

Q Now, with respect to the other damage, are you aware that each and every one of these bill of ladings -- which are Plaintiff's Exhibits 4, 5 and 6, I believe -- Plaintiff's Exhibits 4, 5 and 6, which are the pertinent bills of lading, are you aware of the fact that when this steel was loaded on the Polarland, that each of these bills of lading were claused, indicating that they were not received in apparent good order and condition?

MR. GOODENOUGH: Objection, your Honor.

THE COURT: I don't think that's an accurate statement of what appears in the bill of lading, is it?

MR. WALKER: Yes, that's my understanding.

THE COURT: What is it?

MR. WALKER: In other words, when a bill of lading is claused -- in other words, a bill of lading unclaused is prima facie evidence.

THE COURT: I was suggesting you were not reading the correct statement.

MR. WALKER: I wasn't reading anything, your Honor.

THE COURT: Go ahead.

Q Well, my question was -- and I think there was an objection -- were you aware of the fact that these bills of lading were claused in such a way to indicate that the steel was not received in apparent good order and condition?

MR. GOODENOUGH: Objection, your Honor.

THE COURT: I'll allow it.

A You may rest assured that when we went on board, we asked the officer, the captain, if reserves were made on the bills of lading. He said there were, but he did not know them.

Q I don't want to know what the captain told you, now.

A Just a moment, please. I continue.

I learned later, subsequently, when I received the copies of the bills of lading, I learned that they were claused, yes.

THE COURT: They were what?

A I read them.

Q And you observed that they were claused bills of lading. is that correct?

A Yes.

Q And, in other words, what those clauses mean is that that is the way that steel was received on board the ship, is that correct?

A Implicitly, yes.

Q Now, with respect to the damage -- aside from the ovalization, apart from that damage -- can you tell us whether or not you have an opinion or whether you can tell us when that damage occurred?

A When they took place, you mean?

Q Yes.

A During the loading.

Q That's your opinion?

A Mainly during the transport --

THE WITNESS: No.

MR. WALKER: Let the record show that the witness is again correcting the English interpreter.

A Principally during the loading, and also during the voyage at sea.

Q Now, what I would like to know from you is: What is the basis for your being able to determine that this damage, aside from the ovalization, did not occur when it was loaded onto the railroad cars from the fabrication mill where it was made?

A You can see the damages are recent.

Q When was this cargo discharged in Antwerp, approximately?

A Eighth and ninth of June, 1970.

Q When was the cargo loaded on the Polarland?

A If I refer to each -- to the bills of lading which are signed May 12th.

Q So, then, you are assuming it was loaded on the Polarland by May 12th, is that correct?

A Yes.

Q Now, do you have any way of knowing when it was shipped from the factory?

A No. I have no idea, but you are referring to the factory, the United States?

Q Yes.

A I have no idea.

Q It might have been the day before it was loaded on the ship, isn't that correct?

A Yes.

Q Then it was handled twice, was it not, before it arrived in Antwerp; is that correct?

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A Perhaps even three times.

Q Perhaps even three times.

Are you sitting there telling us that you can tell that it was the last time that it was handled that it was damaged and not the first or the second time?

A When I understand that the happening, that is, bringing the merchandise to the pier and from the pier bring it on board the ship; that's what I am referring to.

Q I am referring to the two definitely, and possibly three times, it was handled before you saw it in Belgium.

It was handled once at the factory; it was handled again at the terminal, the marine terminal; and then it was loaded on the ship; so it was handled at least two and probably three times.

A Well, of course I am excluding the factory because, as a matter of principal, I assumed that in the factory they would handle the merchandise carefully.

Q The fact of the matter is, though, you don't know when the handling damage that you observed occurred, do you?

A Absolutely not, and I did not say when this occurred.

THE INTERPRETER: Where, where.

A We are still talking about damages other than ovalization.

Q Indeed we are.

THE INTERPRETER: You just answered the question I was about to ask: what type of damage were we discussing.

Q The handling damage; because, in fact, because the bills of lading were claused, would that not lead you to believe that the damage occurred before it reached the ship's side?

A Now, of course, this is not my business, but if you ask me, I have to tell you that when you speak of clauses in the bill of lading, they refer to the packing. Also, the word means "wrapping" in French; it means "packing" or "wrapping."

The word, in French, covers both, your Honor, so take your pick.

THE COURT: Coming back a moment to the ovalization damage; you say, in your opinion, it occurred when.

A On board ship.

THE COURT: That means, during the transportation of the merchandise?

A Excuse me. Try to understand this very well. Again, it's during the loading and laying it down in the ship's hold. You might have ovalization there, but this will continue as a result of the movement of the ship.

Q Well, the movement of the ship is unavoidable, is it not?

A I am not there to hold it. I am not there to hold it.

Q But you are a seaman and you know that the movement of the ship is unavoidable, isn't that correct?

A Until now, no method was found to avoid this.

Q Turning now to the packaging for a moment, this was steel that was packaged in the United States.

Did you find the wrappers and the straps to be, in your opinion, adequate export wrapping or packaging?

A Yes.

Q Normal?

A It is a normal packing for sea transport.

Q Well, could you tell me what purpose tnese straps serve?-- and I refer now to Plaintiff's Exhibit 12, and specifically, the black straps shown on the top photograph.

A To hold the package.

Q To hold the package?

A The packing, the packaging.

THE WITNESS: To keep the wrapping in place.

Q Can you refer to your report, which is Exhibit 11, and can you give me the dollar amount of allowance you found to be attributable to handling damage, as opposed to ovalization? In other words, I want to separate the two items of damage.

A The coils that were ovalized badly, have been totally rejected; whereas, the others, which were marked "slightly ovalized," we did not give an allowance for that. I don't remember exactly any more.

Q I am not talking about them in any case. I want the dollar amount of damage you attribute to handling damage or damage other than ovalization.

A Do you want the total amount? Do you want the coil by coil? I don't understand.

Q No. I want the total amount. I don't want the coil.

A Tell me again what is it you want to know.

Q I want to know the total amount of damage in dollars, that you attribute to the handling damage or damage other than ovalization.

A I must have written it down in my report.

Q Well, please refer to your report and give us the figure.

A It's not in the Exhibit 11. Each time we refer

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to the extent of the damage on page 2, extent of the damage.

MR. WALKER: That document in evidence, Mr. Goodenough?

MR. GOODENOUGH: No, it is not.

Q Can you give me the numbers? Let's put it this way -- there were 16 coils rejected, is that correct?

A Yes.

Q Did you have a salvage sale for those?

A Yes.

Q To whom did you sell those?

A To Harmsen Company in Holland.

Q Now, the coils that were damaged by handling, were those coils all delivered and accepted by the consignee?

A Yes.

Q But you gave them -- meaning the consignee -- an allowance; is that correct?

A Yes.

Q And I want to know the dollar amount of that allowance.

A Each time you have to refer to --

THE WITNESS: Dollars, less value granted. U.S. dollars 19,862.13.

Q Dollars?

A Dollars. U. S. dollars.

Q That's the allowance.

A Yes.

THE COURT: For what?

A The mechanical damage due to handling.

Q $19,000?

A $19,862.13.

Q That's the damage that you don't know when that damage occurred, is that correct.

A That's right.

Q Now, then, the only other item of damage here is the 16 coils that were rejected for ovalization; is that correct?

A You mean what's left? Left for whom? I don't know what you are talking about.

Q In other words, there is no more damage; there are no other items of damage.

A We spoke of the mechanical damage.

Now, I think, I imagine that you would come back to speak about ovalization again.

Q Yes.

A Yes.

Q What I am saying is -- and I am not trying to trick you -- but what I am trying to divide this up into is, the total damage to this shipment consisted of mechanical damage or handling damage or damage attributable to ovalization.

A This is the ovalization, yes.

THE COURT: In other words, counsel is asking you how much of the total damage do you attribute to handling; and, I think, you indicated it was $19,000-odd-dollars.

How much do you attribute to the ovalization damage?

A For the 19,000? I mean, your Honor, how much of the $19,000 ovalization?

THE COURT: No. I understood that you separated the items of damage.

Just listen to me for a minute.

THE WITNESS: You see why I ask for a translation?

THE COURT: Listen to me.

I think I understand what counsel has in mind, and if I am incorrect, you follow up, Mr. Walker.

You have listed several items of damage in your report. One item is ovalization. I believe there are 16 units that suffered damage by what you call "ovalization."

Then there is a separate item of damage for handling, and you don't know where this damage occurred. You say, you can't specify where it occurred.

Now, there are two items of damage, is that correct?

A Yes.

THE COURT: How much do you attribute to the ovalization damage?

A In my statement of November 5, 1970, there was an amendment made which I confirmed on November 27th.

THE COURT: Well, that doesn't answer the question I've asked--whether he made an amendment or not.

A We attributed the damage in Belgian currency, your Honor, amounting to 547,040 francs, Belgian currency.

THE COURT: The damage covering what items?

A Ovalization.

THE COURT: And what does that come to in American dollars?

A About 10,000, 11,000.

THE COURT: I'll take 11,000; and the other damage, you say, is approximately $19,000.

A 19,862.13.

THE COURT: That was the inquiry you were making, is that correct?

MR. WALKER: Indeed it was.

It might be interesting to know what the rate of exchange was.

Q What was the rate of exchange? How many Belgian francs to a dollar in 1970?

A At the time, I think it was approximately 50 francs to a dollar.

Q Is that the figure used to get at that 19,000?

A Well, that is to say, we did -- just a moment, bear with me.

Sir, if you multiply United States dollars, 19,862.13, by the value of the day, you multiply and you will have the answer in dollars.

Q I understand that, but I thought maybe you had the figure in your record.

A No, I don't.

Q The 16 coils that were rejected by reason of ovalization, are the numbers of those coils set forth in your report?

A Yes.

Q And the ones under bill of lading No. 1, do they appear on page 15 and 16?

A Yes.

Q And do the coils that were rejected by reason of excessive ovalization under bill of lading 2, appear on page 24?

A Yes.

Q And do the coils that were rejected because of excessive ovalization under bill of lading No. 3, do the coil numbers appear on page 37 of the report?

A Thirty-seven, yes.

MR. WALKER: No further questions of this witness.

THE COURT: Mr. Sanfilippo?

MR. SANFILIPPO: I believe I may have one question to ask, your Honor.

CROSS-EXAMINATION

BY MR. SANFILIPPO:

Q You have testified that a portion of the coils were taken by the consignee who was given depreciation allowance; is that accurate?

A Yes.

Q Do you know what the consignee did with these coils which he received in a damaged condition?

A Listen to me: These coils are purchased with certain allowances.

THE COURT: Certain what?

A Allowances.

THE WITNESS: No, no.

A Excuse me now. How am I going to explain this. That is to say, if you order sheet metal that is one meter wide or long, you cannot go below one meter. That is to say, if you have damages in the rolling of the sheet metal coils, now the employees come in and cut certain yardage--or meters, if you wish--after they cut it, but they will have lost money.

Q The question that I asked requires a yes-or-no answer.

Do you know what the consignee did with these damaged coils?

A No.

Q Did you try to find out whether they made complete use of these coils?

A No.

MR. GOODENOUGH: Objection, your Honor. It's irrelevant.

MR. SANFILIPPO: It's quite relevant on the question of damages.

THE COURT: Overruled.

Q Now, you have testified that you visually inspected the coils while they were in the hold. Would that have been the No. 2 hold of the vessel?

A Yes.

Q And did you consider all of the coils in that hold to belong to the shipment which was under the bills of lading which have been marked Plaintiff's Exhibits 4, 5 and 6?

A I believe; but I don't remember any further, any more.

Q Did you know that there were coils that pertained to a different shipment in the No. 2 hold?

A Perhaps; it could be; it could well be.

Q How did you distinguish between the coils that belonged to the bills of lading 4, 5 and 6 and the coils that belonged to another shipment?

A From the markings, as well as the sorting made by the stevedoring.

Q But that sorting was made after the coils were discharged, was it not?

A No, during the unloading operation.

MR. SANFILIPPO: I have no further questions.

THE COURT: Any redirect?

MR. GOODENOUGH: Yes, your Honor.

THE COURT: If it's going to be extensive, it will go over until tomorrow morning. I have an engagement at 4:30 in chambers.

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11-9/74

11-22

DEFS. VESTLAND & RICH. AMLIE
REQUESTS FOR ADMISSIONS
TO PLAINTIFF & DEF.
SEVEN SEAS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

------------------------------------x

NIMPEX INTERNATIONAL INC.,
TRAVELER'S INDEMNITY COMPANY,
Plaintiffs,

-against-

SS POLARLAND, her engines, boilers, etc., D/S A/S VESTLAND, RICH. AMLIE & CO., A/S, SEVEN SEAS SHIPPING CORP., and FERROSTAHL, "GmbH" (corporate characterization fictitious, defendant intended is explained in Schedule A of the Complaint),
Defendants.

------------------------------------x

REQUEST FOR
ADMISSION UNDER
RULE 36 OF THE
F.R.C.P.

72 Civ. 3779 (EW)

RJR

S I R S :

Defendants, D/S A/S Vestland and Rich. Amlie & Co. A/S, request plaintiffs, Nimpex International Inc. and Traveler's Indemnity Company, and defendant, Seven Seas Shipping Corp. within 30 days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. The attached document marked "Exhibit A" is an authentic and genuine copy of the charterparty which was in force between the owner of the m/s Polarland and the bareboat charterer, Molena Trust Incorporated, at the time the cargo, which is the subject of this suit, was loaded and carried on board the m/s Polarland.

[illegible] Deny It [illegible]

2. The attached document marked "Exhibit B" is an authentic and genuine copy of the charterparty which was

A.

BEST COPY AVAILABLE

Yes
But not complete

in force between Molena Trust Incorporated (bareboat chartered owner of the m/s Polarland) and Messrs. Ferrostaal A.G. at the time the cargo, which is the subject of this law suit, was loaded and carried on board the m/s Polarland.

A

3. The attached document marked "Exhibit C" is an authentic and genuine copy of the contract between Seven Seas Shipping Corporation and Great Lakes International Corporation covering stevedoring services rendered during the 1970 navigation season.

Yes?.

A

4. The shipment which is the subject of this law suit was loaded and stowed on board the m/s Polarland pursuant to the terms of a contract, a genuine and authentic copy of which is attached hereto as Exhibit "C".

?.

A

5. Seven Seas Shipping Corp. entered into an agreement with Great Lakes International under the terms of which Great Lakes International would be the exclusive stevedore in the port of Cleveland for the 1970 season for Seven Seas Shipping Corp.

See #3

D

6. The document attached hereto and marked as "Exhibit D" is an authentic and genuine copy of bill of lading No. 2 under which a portion of the shipment, which is the subject of this suit, was carried on board the m/s Polarland.

Yes ?.

Signature [illegible]

D

7. The document attached hereto and marked as "Exhibit E" is an authentic and genuine copy of the payment record card of Great Lakes International Corp. for Hupex International.

No

D

8. The document attached hereto and marked as "Exhibit F" is an authentic and genuine copy of the payment

No [illegible]

record card of Great Lakes International Corp. for Seven Seas Shipping Corp.

No H D 9. The documents attached hereto and marked as "Exhibits E and F" are copies of records kept in the regular course of the business of Great Lakes International Corp.

Dated: New York, New York,
July , 1974.

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendants
D/S A/S Vestland and
Rich. Amlie & Co. A/S

By________________________

One State Street Plaza
New York, New York 10004

TO:
DONOVAN, DONOVAN, MALOOF & WALSH, ESQS.
Attorneys for Plaintiff
161 William Street
New York, New York

KIRLIN, CAMPBELL & KEATING, ESQS.
Attorneys for Defendant,
Seven Seas Shipping Corp.
120 Broadway
New York, New York

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ORIGINAL

M.S. POLARLAND
BAREBOAT CHARTER

D/S A/S VESTLAND (Rich. Amlie & Co. A/S)

TO

MOLENA TRUST INCOROPRATED

Description of vessel

THIS CHARTER PARTY, made and concluded on the day of 8th December, 1967, between D/S A/S VESTLAND, (Rich. Amlie & Co. A/S.), Haugesund, Norway, (hereinafter called "Owner"), Owner of the good Norwegian flag Motorship POLARLAND (hereinafter called "Vessel"), call letters L J J Z , a geared bulk carrier, provided with proper certificates for hull and machinery and classed Det Norske Veritas + 1.A.1. T of about 20.050 tons deadweight, or thereabouts, on summer freeboard, inclusive of bunkers and stores, and MOLENA TRUST INCORPORATED, a Liberian corporation, of Monrovia, Liberia (hereinafter called "Charterer").

Charterer

WITNESSETH:

Charter Period

The Owner agrees to let and the Charterer agrees to hire the Vessel for a period of 96 consecutive calendar months commencing as from the date of her delivery to Charterer, subject to the following terms and conditions:

Port of Delivery

1. The Vessel shall be delivered to the Charterer in Antwerp, unless the Charterer elects to paint the vessels' bottom in which case the vessel to be delivered in Rotterdam. On delivery the vessel shall be tight,

staunch, strong, and sufficiently tackled, appareled, furnished, and equipped, fully classed free of all outstanding recommendations, and in every respect seaworthy and in good running order, condition, and repair so far as the exercise of due diligence can make her. The delivery to the Charterer of the said Vessel and the acceptance of the said Vessel by the Charterer shall constitute a full performance by the Owner of all of the Owner's obligations under this clause, and thereafter the Charterer shall not be entitled to make or assert any claim against the Owner on account of any representation or warranties express or implied, with respect to said Vessel.

Acceptance

Time for delivery.

Cancellation date.

2. If required by the Charterer, time not to commence before December 22, 1967, and should Vessel not be ready for delivery on or before January 15th, 1968, Charterer, or their agent, to have the option of cancelling this Charter; such option to be declared by noon of the following day, and if not so declared, the Charter to be considered in force.

Use and Trade of Vessel.

3. The Vessel shall be employed in carrying lawful merchandise in such lawful trades between safe ports throughout the world within the limits of trading warranties in effect in the policies of insurance upon her as hereafter provided for and endorsements thereon. Charterer shall also be entitled to use and operate the Vessel outside Insurance Policy limits upon paying such additional premiums as may be charged by the Vessel's underwriters under said policies, but in no event shall the Vessel be traded to Cuba, Vietnam, North Korea, Israel, Communist China; U.S.S.R., or satelites, or any other country if and as long as such trading involves the risk of blacklisting, boycott or any other kind of repercussion against Vessel or her Owner. The Charterer warrants that upon redelivery the Vessel will not be blacklisted or exposed to repercussions of any kind by any Government Authority or Body of Workmen essential to the normal trading of the Vessel as a consequence of her previous employment. Should Charterer so trade the

Vessel the Owner shall have the right to immediately withdraw the Vessel from the service of the Charterer.

The Vessel shall not in Owner's discretion carry commodities of a nature likely to cause damage to the Vessel in excess of normal wear and tear.

Surveys.

4. The Vessel shall be jointly surveyed before delivery and on redelivery to determine the condition of the Vessel. The cost and time of such delivery survey shall be for the account of Owner, and similarly the cost and time of such redelivery survey shall be for the account of Charterer, provided that each party shall bear the cost of surveyors appointed by it in connection with both delivery and redelivery surveys.

Charterer to man, etc.

5. The Charterer shall, at its own expense, and by its own procurement, man, victual, navigate, fuel and lubricate and supply the Vessel, the Master and Chief Engineer, however, to be subject to the approval of the Owner, and the Owner shall have the right to require the removal of the Master or Chief Engineer if it shall have reason to be dissatisfied.

6. The Charterer shall pay all port charges, pilotages, and all other costs and expenses incident to the use and operation of the Vessel.

Maintenance.

7. The Charterer shall, at its own expense, keep the said Vessel in good running order and condition and in the same condition as when received from Owner, ordinary wear and tear excepted, and have her regularly overhauled and repaired when necessary. Vessel shall be drydocked, cleaned, and painted by the Charterer as may be necessary, but at least once in every twelve calender month from date of delivery, unless otherwise agreed.

Hire.

8. (a) The Charterer shall pay hire to the Owner for

the use of said Vessel at the rate of US $ 120.000.00 (U.S.DOLLARS ONEHUNDREDANDTWENTYTHOUSAND) per quarter consisting of three consecutive calendar months (hereinafter called "quarter"), commencing on and from the day of her delivery to the Charterer, and at and after the same rate for any part of a quarter; hire to continue without abatement or suspension (unless the Vessel is lost) until the day when the Vessel is redelivered to the Owner. If the Vessel is lost, hire shall cease as from the day of her loss (if the time of her loss be uncertain, then as from the day she is last heard from) and any hire paid in advance but not earned shall be returned to the Charterer.

(b) Payment of hire shall be made to the Owner at its nominated bank in New York in cash on delivery, for the first quarter, and thereafter quarterly in advance on the day of commencement of each succeeding quarter.

(c) At or before the expiration of the second month during the first quarter, Charterer shall also pay $ 37.500.- to Owner in escrow as security for the performance of its obligations under this charter.

Termination for Default.

(d) If Charterer shall fail to pay hire in full on any due date under this clause or if it is in breach of any of its other obligations under this Charter and if such failure or breach shall continue for a period of twenty-one (21) days after written protest (cable or telex to be an acceptable protest) thereof has been given to the Charterer by the Owner, the Owner may, at its option, terminate this Charter forthwith by written notice to the Charterer and retake the Vessel, in which event all monies paid to the Owner shall be forefeited and not refunded, this Charter shall be terminated andthe Owner shall have no further claim against the Charterer for the unfulfilled balance of the term of this Charter but shall be entitled to recover from the Charterer any hire earned prior to such termination and retaking and not paid.

(e) Should the vessel be on her voyage toward the port of redelivery at the time when payment of hire becomes due, said payment shall be made for such length of time as the Owner and the Charterer may agree upon as the estimated time necessary to complete the voyage, and when the vessel is redelivered to the and any difference shall be refunded by the Owner or paid by the Charterer, as the case may require.

Fuel and stores.

9. The Charterer shall accept and pay for all fuel, lub. oil and consumable stores on board at time of Vessel's delivery, and the Owner shall accept and pay for all such fuel, lub.oil and stores left on board on redelivery (with the exception of perishable stores) at the current market prices prevailing at the port of delivery and redelivery.

Use of equipment.

10. (a) The Owner warrants that all equipment (which expression includes cabin, crew and galley equipment, navigational aids and technical equipment, furnishings and fittings, and spare and replacement parts) on board the Vessel at the time of delivery will be solely owned by it. The Charterer shall have the use of all such equipment without extra cost.

(b) All of the aforesaid equipment or the substantial equivalent thereof shall be returned to Owner on redelivery in the same good order and condition as when received, ordinary wear and tear excepted.

(c) Subject to the provisions of Clause 19 of the Charter, the Charterer may at any time alter or remove all or any items of equipment, or may fit any additional equipment to render the Vessel available or suitable for any trade for which Charterer is entitled to use her under Clause 3 hereof. Any additional equipment so fitted by Charterer shall be the property of Charterer who may remove the same before, or at the time of redelivery of the Vessel. The cost of fitting or removing any equipment together with the cost of making good any damage caused by such fittings or removal shall be paid in full by Charterer who shall redeliver the Vessel's equipment to Owner in accordance with the provisions of paragraph b. of this Clause.

Inventories.

11. A complete inventory of the Vessel's equipment, and of all consumable stores shall be taken and mutually agreed upon at the time of delivery, and a similar inventory shall be taken andmutually agreed upon at the time of redelivery.

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Liens against Vessel.

12. Neither the Charterer nor the Master of the Vessel shall have any right, power, or authority to create, incur, or permit to be imposed upon the Vessel any liens whatsoever except for crew's wages and salvage. The Charterer agrees to carry a properly certified copy of this Charter Party with the ship's papers, and on demand to exhibit the same to any person having business with the Vessel which might give rise to any lien thereon, other than liens for crew's wages and salvage. The Charterer agrees to notify any person furnishing repairs, supplies, towage or other necessaries to the Vessel that neither the Charterer nor the Master has any right to create, incur, or permit to be imposed upon the Vessel any liens whatsoever except for crew's wages and salvage. Such notice, as far as may be practicable, shall be in writing. The Charterer further agrees to fasten to the Vessel in a conspicuous place and to maintain during the life of this Charter, a notice reading as follows:

> " This Vessel is the property of D/S A/S VESTLAND (Rich. Amlie & Co. A/S.) Haugesund, Norway. It is under Charter to Molena Trust Incorporation, Monrovia, Liberia and by the terms of the Charter neither the Charterer nor the Master has any right, power, or authority to create, incur, or permit to be imposed upon the Vessel any liens whatsoever except for Crew's wages and salvage."

(a) In order to assure the Owners that no liens can, or will be, asserted or claimed against the Vessel for bunkers supplied to her other than on orders of the Owner, the Charterer undertakes to furnish, or cause to be furnished, to Owner regularly copies of the receipts of such suppliers, evidencing payment for the bunkers supplied by them. In the event that such receipts are not so furnished for a period of six (6) months, Owner may demand that the same be furnished, and upon Charterers' failure to comply with such demand immediately, Owner shall be entitled to use the escrow money referred to in clause 8 (c) hereof to pay any outstanding bills of the bunker suppliers, and / or may also exercise its right to terminate this charter and retake the Vessel in accordance with the provisions of Clause 8 (d) hereof

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Bills of Lading or Voyage Charters.

13. All bills of lading issued, and voyage charters entered into, during the charter period shall contain directly or by reference substantially the following clauses:

(i) Clause Paramount:

"This bill of lading shall have effect subject to the provisions of the Carriages of Goods by Sea Act of United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunicies or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading to be repugnant to said Act to any extent, such term shall be void to that extent but no further."

(If the port of loading or discharge of the goods is such that another Carriage of Goods by Sea Act or adaption of the Hague Rules, 1924, is, or ordinarily would be, applicable, then such other Act or adaption of said Rules may be substituted for the Carriage of Goods by Sea Act of the United States).

(ii) General Average Clause:

"General Average shall be adjusted, stated, and settled according to York-Antwerp Rules, 1950, exclusive of Rule XXII, at such port or place in the United States as may be selected by the carrier, and as to matters not provided for by these Rules, according to the laws and usages at the port of New York. In such adjustment, disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damage cargo from the ship. Average agreement or bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if required, be made by the goods shippers, consignees, or owners of the goods to the carrier before delivery.

Such deposit shall, at the option of the carrier, be payable in United States money, and be remitted to the adjuster. When so remitted, the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the general average and refunds or credit balances, if any, shall be paid in United States money."

(iii) Amended Jason Clause:

"In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which the carrier is not responsible by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the salving ship or ships belong to strangers."

(iv) Liberties Clauses:

"In any situation whatsoever and wheresoever occuring and whether existing or anticipated before commencement of or during voyage, which in the judgment of the carrier or master is likely to give rise to risk of capture, seizure, detention, damage, delay or disadvantage to or loss of the ship or any part of her cargo, or to make it unsafe, inprudent, or unlawful for any reason to commence or proceed on or continue the voyage or to enter or discharge the goods at the port of discharge, or to give rise to delay or difficulty in arriving discharging, at or leaving the port of discharge or the usual place of discharge in such port, the carrier may before loading or before the commencement of the voyage, require the shipper or other person entitled thereto to take delivery of the goods at port of shipment and upon their failure to do so, may warehouse the goods at the risk and expense of the goods; or the carrier or master, whether or not proceeding toward or entering or attempting to enter the port of discharge or reaching or attempting to reach the usual place of discharge therein or attempting to discharge the goods there, may discharge the goods into depot, lazarette, craft or other place; or the ship may proceed or return, directly or indirectly, to or stop at any such port or place whatsoever as the master or the carrier may consider safe or advisable under the circumstances, and discharge the goods, or any part thereof, at any such port or place; or the carrier or the master may retain the cargo on board until the return trip or until such time as the carrier or the master thinks advisable, and discharge the goods at any place whatsoever as herein provided; or the carrier or the master may discharge and forward the goods by any means at the risk and expense of the goods. The carrier or the master is not required to give notice of discharge of the goods or the forwarding thereof as herein provided. When the goods are discharged from the ship, as herein provided, they shall be at their own risk and expense; such discharge shall constitute complete delivery and performance under this contract and the carrier shall be freed from any further responsibility. For any service rendered to the goods as herein provided the carrier shall be entitled to a reasonable extra compensation.

The carrier, master and ship shall have liberty to comply with any orders or directions as to loading, departure, arrival, routes, ports of call, stoppages. discharge, destination, delivery or otherwise howsoever given by the government of any nation or department thereof or any person acting or purporting to act with the authority of such government or for any department thereof, or by any committee or person having, under the terms of the war risk insurance on the ship, the right to give such orders or directions. Delivery or other disposition of the goods in accordance with such orders or directions shall be a fulfilment of the contract voyage.
The ship may carry contraband, explosives, munition, warlike stores, hazardous cargo, and may sail armed or unarmed and with or without convoy.

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> In addition to all other liberties herein the carrier shall have the right to withhold delivery of, reship to, deposit or discharge the goods at any place whatsoever, surrender or dispose of the goods in accordance with any direction, condition or agreement imposed upon or exacted from the carrier by any government or department thereof or any person purporting to act with the authority of either of them. In any of the above circumstances the goods shall be solely at their risk and expense and all expenses and charges so incurred shall be payable by the owner or consignee thereof and shall be a lien on the goods."

All Bills of Lading to be signed in accordance with Mates Receipts.

General and Particular Average. 14. Average adjusters shall be appointed by the Charterer and shall attend to the settlement and collection of both general and particular average losses subject to customary charges. The Charterer agrees to assist the adjusters in preparing the average statement and to take all other possible measure to protect the interests of the Vessel and the Owner.

Notices. 15. Unless otherwise provided in this charter notices and communications from the Charterer to the Owner shall be made or given to the Owner at Haugesund, Norway, and all notices and communications from the Owner to the Charterer shall be made or given to the Charterer at 745 Fifth Avenue, New York, New York 10022. The place at which notice shall be given may be changed by the giving of notice pursuant to this Clause.

Insurance: 16. Owner covenants and agrees that at time of delivery of the Vessel hereunder, the Vessel will be insured as follows:

Marine Hull & Machinery	Insured Value	Total Loss
25% Bergens Skibsassuranse-forening.	$ 825.000.-	
65% British underwriters through Bland Welch Co.	2.145.000.- +	($ 800.000.-disbursemen or increase value ($ 350.000.-Freight Int est.
10% Haugesunds Sjøforsikrings-selskap A/S	330.000.-	
	Total:	$ 4.450.000.-

War Risks Hull & Machinery

Den Norske Krigsforsikring for Skip $4.500.000.-

Marine Protection & Indemnity Insurance
including Crew's Effects

Assuranceforeningen Gard of Arendal

Copies of said policies or their equivalent with English translations thereof shall be furnished to Charterer by Owner as soon as reaonably possible.

At all times while this charter is in force such insurances shall, at Charterer's expense, be carried and maintained in effect under the aforesaid policies provided, however, that if expressly agreed in writing by Owner and Charterer, such insurance may be placed with other insurers under similar policies.

Both Owner and Charterer shall be named coassureds in all policies covering the insurance required by this clause or such other steps shall be taken as may be necessary or appropriate in order for such insurances to extend to, and protect, the Charterer as well as the Owner.

Partial losses under any such insurances on hull and machinery shall be made payable to Charterer to pay, or reimburse itself, for the cost of repairing, restoring or replacing the damages or lost property and expenses covered by such insurance.

Should the Vessel become an actual or constructive total loss, all insurance proceeds in respect to such loss shall be paid to Owner who shall distribute the monies to itself and to Charterer, as their respective interests may appear. Charterer shall then be under no further obligation to Owner in respect to the loss of the Vessel notwithstanding such loss may have been caused by negligence of the Charterer or of those for whom they are responsible.

In the event of any third-party claims, whether for personal injuries, loss of life or for property damage or otherwise, which constitute claims under any of said insurances, the proceeds of such insurances shall be paid to Charterer who shall apply such monies to discharge of the claim or liability concerned or expenses incurred in connection therewith or to reimburse itself for payments made

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by Charterer to satisfy such claim or liability and expenses incurred in connection therewith.

All savings in premiums due to reductions, discounts or refunds granted by the insurers by reason of Vessel's good insurance experience record or by reason of placing the Vessel's hull & machinery insurance, protection and indemnity or other insurances with the same insurers in the form of a group or fleet policy covering two or more vessels, or by reason of any other factors or considerations whatsoever shall injure to the sole benefit of the Charterer.

Redelivery Port and Redelivery Notice.

17. (a) The Vessel shall at the expiration of the charter period be redelivered to the Owner (unless lost) at safe port in Antwerp/Hamburg range to be named by Charterer, the Charterer to give Owner at least 30 days' approximate, and 15 days notice of expected date of redelivery and redelivery port.

Redelivery Conditions.

(b) The Vessel shall be redelivered to the Owner in the same or as good order and condition as that in which she was when delivered, ordinary wear and tear excepted, fully classed, free of any outstanding recommendations. On the redelivery survey provided for in the Clause 4 the Vessel shall be placed in drydock and the surveyors appointed by the Owner and Charterer, respectively, shall determine and state the repairs and work necessary to place the Vessel in the condition and class required by this clause. The Charterer, before redelivery, shall make all such repairs and do all such work so found to be necessary at its expense and on its time. All expenses in connection with the drydocing, including the expense of putting the Vessel in and taking her out of drydock, drydock dues and the charges of Det Norske Veritas' surveyor shall be borne by Charterer.

Notwithstanding the provisions of the preceding paragraph, however, the Charterer shall not be required to make any repairs or do any work or incur any expense covered by the insurance on the Vessel.

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Disputes. (c) Should any dispute arise between the Owner and the Charterer with respect to responsibility for repairs, renewals, or replacements, or as to the condition of the Vessel at the time of redelivery, either the Charterer or the Owner may without prejudice to its contentions, make and pay for such repairs, renewals, or replacements, or any part thereof before or after tender of redelivery, and may recover the cost thereof from the party for whose account it may be under the terms of the Charter. In the event Charterer's liability for such repairs, renewals, or replacements is established, the Charterer shall pay hire for all time lost thereby, provided, however, that the Charterer shall be obligated to pay such hire only in the event that such repairs, renewals or replacements were of such nature as to prevent Owner from utilizing the Vessel in normal service following redelivery of the Vessel.

Salvage. 18. All derelicts and salvage shall be prorated-25 per cent to the Owner and 75 per cent to the Charterer, after deducting Owner's and Charterer's expenses and officer's and crew's proportion. However, hire of the Vessel shall not be considered an item of the Charterer's expense hereunder.

Alterations. 19. The Charterer shall not make any structural changes in the Vessel without first securing the approval of the Owner. During the charter period Charterer shall have the privilege of insalling its (or its time charterer's) stack marks and insignia, provided, however, that upon redelivery of the Vessel Charterer shall be obligated to install Owner's stack marks and insignia.

Libels/ Complaints.

20. The Charterer shall indemnify and hold harmless the Owner against any liens of whatsoever nature upon said Vessel and against any claims against the Owner arising out of the operation of said Vessel by the Charterer; or out of any act or neglect of the Charterer in relation to said Vessel. If a libel or complaint should be filed against said Vessel, or if said Vessel is otherwise levied against or taken into custody by virtue of legal proceedings in any court because of any such lien or claim, the Charterer shall within twelve (12) days thereof cause the said Vessel to be released and the lien to be discharged. This clause shall not in any way authorize the creation of any liens against the Vessel or in any way effect or impair the provisions of Clause 12 of this Charter.

Owner's Lien.

21. The Owner shall have a lien upon all cargoes and all subfreights for any amounts due under this Charter party including General Average contributions.

Applicable Law and Arbitration.

22. This Charter party shall be governed by Norwegian Law. All disputes in connection with this Charter Party shall be referred to arbitration in Bergen in accordance with Chapter 32 in the Norwegian Procedure Act dated August 13, 1915, No. 6.

Counterparts.

23. This Charter Party may be executed simultaneously in several counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute but one and the same instrument.

Marginal headings.

24. The marginal headings of the clauses of this Charter Party are used for convenience of reference only and are not to be construed as limiting, or in any other manner affecting, the substance or meaning of the respective clauses.

IN WITNESS WHEREOF, the parties hereto have caused this Charter Party to be duly executed as of the day and year first above written.

Witness:

D/S A/S VESTLAND
(Rich. Amlie & Co. A/S)
(or [illegible]
By
As Agent Only.

Signed according power of attorney dated 8th December 1967.

Witness:

MOLENA TRUST INCORPORATION
By

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EXHIBIT "A"

188 1386-479

Form 13 — Printed in U.S.A. and Sold by [illegible] & Co., Inc., 21 Beaver St., New York

ORIGINAL COPY

Time Charter

GOVERNMENT FORM

Approved by the New York Produce Exchange

November 6th, 1913—Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946

9/p

(29)

[illegible] Jung & Co.
Shipbrokers
2 Hamburg 1, Ballindamm 17
[illegible]

This Charter Party, made and concluded in ......Stockholm...... the 5th ...... day of March 1970

Between ...[illegible] Incorporated, as disponent/chartered Owners (hereinafter "Owners")

Owners of the good Norwegian ...... Steamship/Motorship ...POLARLAND...... of ...[illegible]

of ...[illegible]...... tons gross register, and ...[illegible]...... tons net register, having engines of .... indicated horse power

and with hull, machinery and equipment in a thoroughly efficient state, and classed ...[illegible]...... and about ...[illegible]...... tons of [illegible]

at ...Norwegian Veritas... of about ...[illegible]...... cubic feet [illegible] capacity, and about ...... one and one-half percent of ship's deadweight capacity

deadweight capacity (cargo and bunkers, including fresh water and stores not exceeding one and one-half percent of ship's deadweight capacity, allowing a minimum of fifty tons) on a draft of ...31...... feet ...[illegible]...... inches on .... Summer freeboard, inclusive of permanent bunkers,

which are of the capacity of about .... tons of fuel, and capable of steaming, fully laden, under good weather conditions about ...[illegible]...... knots on a consumption of about ...[illegible]...... tons of [illegible] best grade Diesel oil

now ...trading......

[illegible] in [illegible] wingtanks, suitable for grain

and ...Messrs. Ferrostaal AG...... Charterers of the City of ...Essen......

Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery, for ...min. 11 upto max. 13 months T/C in Charterers option ...... within below mentioned trading limits.

Charterers to have liberty to sublet the vessel for all or any part of the time covered by this Charter, but Charterers remaining responsible for the fulfillment of this Charter Party.

Vessel to be placed at the disposal of the Charterers, ...when/where open at Eleusis or La Spezia in Owners option ... estimated end March/April, 1970 ...... except as otherwise provided in clause No. [illegible] in such dock or at such wharf or place (where she may safely lie, always afloat, at all times of tide, except as otherwise provided in clause No. 6) as [illegible] such dock, wharf or place be not available time to count as provided for in clause No. 5. Vessel on her delivery to be ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted for the service, having water ballast, winches and donkey boiler with sufficient steam power, or if not equipped with donkey boiler, then other power sufficient to run all the winches at one and the same time (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), to be employed, in carrying lawful merchandise, excluding ...[illegible]...... [illegible] on deck [illegible] Charterers are to have the privilege of shipping [illegible] in such lawful trades, between safe port and/or ports in [illegible] all necessary [illegible] for account of [illegible]

[illegible] excluding Cuba, Vietnam, North Korea, [illegible] [illegible] trading within Institute Warranty Limits [illegible] or Satellites or any other country if and as long as such trading involves the risk of blacklisting, boycott or any other kind of repercussion against Vessel or her Owners. See also Clause [illegible]

[illegible] and agreed [illegible] Owners but [illegible] exceeding [illegible]

[illegible] Charterer's [illegible] option

1. That the Owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of the Crew; shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, including boiler water and maintain her class and keep the vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service.

2. That the Charterers shall provide and pay for all the fuel except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Crew), and all other usual expenses except those before stated, but when the vessel puts into a port for causes for which vessel is responsible, then all such charges incurred shall be paid by the Owners. Fumigations ordered because of illness of the crew to be for Owners account. Fumigations ordered because of cargoes carried or ports visited while vessel is employed under this charter to be for Charterers account. All other fumigations to be for Charterers account after vessel has been on charter for a continuous period of six months or more.

[illegible]

BEST COPY AVAILABLE

189a

[illegible] except those before stated, but when the vessel puts into [illegible] for which vessel is responsible, then all such charges incurred shall be paid by the Owners. Fumigations ordered because of illness of the crew to be for Owners account. Fumigations ordered because of cargoes carried or ports visited while vessel is employed under this charter to be for Charterers account. All other fumigations to be for Charterers account after vessel has been on charter for a continuous period of six months or more.

Charterers are to provide necessary dunnage and shifting boards, also any extra fittings requisite for a special trade or unusual cargo, but Owners to allow them the use of any dunnage and shifting boards already aboard vessel. Charterers to have the privilege of using shifting boards for dunnage, they making good any damage thereto.

Clause 46

~~3. [illegible]~~

~~[illegible]~~

~~[illegible] tons.~~

4. That the Charterers shall pay for the use and hire of the said Vessel at the rate of US $ 4.-- (Dollars Four) or pro rata ……………… United States Currency per ton on vessel's total deadweight carrying capacity, including bunkers and stores, on 20,050 tons ……… summer freeboard, per Calendar Month, ~~commencing on and from the day of her delivery, as aforesaid,~~ [illegible] and after the same rate for any part of a month; hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) at a safe port UK/Continent/Mediterranean not east of West Coast Italy ……………… unless otherwise mutually agreed. Charterers are to give Owners not less than 15 and [illegible] days notice of vessels expected date of re-delivery, and probable port. and [illegible] days def. notice

[illegible] per month or pro rata for overtime for Officers and Crew

Owners account in Den norske Creditbank, Oslo telegraphic advice

5. Payment of said hire to be made [illegible] in cash in United States Currency, semi-monthly in advance, and for the last half month or part of same the approximate amount of hire, and should same not cover the actual time, hire is to be paid for the balance day by day, as it becomes due, if so required by Owners, unless bank guarantee or deposit is made by the Charterers, otherwise failing the punctual and regular payment of the hire, or bank guarantee, or on any breach of this Charter Party, the Owners shall be at liberty to withdraw the vessel from the service of the Charterers, without prejudice to any claim they (the Owners) may otherwise have on the Charterers. ~~Time to count from 7 a.m. on the working day following that on which written notice of readiness has been given to Charterers or their Agents before 4 p.m., but if required by Charterers, they to have the privilege of using vessel at once, such time actually used to count as hire.~~

Cash for vessel's ordinary disbursements at any port may be advanced as required by the Captain, by the Charterers or their Agents, ~~subject to [illegible] commission~~ and such advances shall be deducted from the hire. The Charterers, however, shall in no way be responsible for the application of such advances. Estimated Owners disbursements to be deducted from hire payment or payments

6. That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place that Charterers or their Agents may direct, provided the vessel can safely lie always afloat at any time of tide, ~~except at such places where it is customary for similar size vessels to safely lie aground.~~

7. That the whole reach of the Vessel's Hold, Decks, and usual places of loading (not more than she can reasonably stow and carry), also accommodations for Supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for Ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel. ~~Charterers have the privilege of passengers as far as accommodations allow, Charterers paying Owners [illegible] per day per passenger for accommodations and meals. However, it is agreed that in case any fines or extra expenses are incurred in the consequences of the carriage of passengers, Charterers are to bear such risk and expense.~~ No passengers

8. That the Captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with ship's crew and boats. The Captain (although appointed by the Owners), shall be under the orders and directions of the Charterers as regards employment and agency; and Charterers are to load, stow, trim and discharge the cargo at their expense under the supervision of the Captain, who is to sign Bills of Lading for cargo as presented, in conformity with Mate's or Tally Clerk's receipts.

[illegible] discharge

9. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers, or Engineers, the Owners shall on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

10. That the Charterers shall have permission to appoint a Supercargo, who shall accompany the vessel and see that voyages are prosecuted with the utmost despatch. He is to be furnished with free accommodation, and same fare as provided for Captain's table, Charterers paying at the rate of [illegible] per day. Owners to victual Pilots and Customs Officers, and also, when authorized by Charterers or their Agents, to victual Tally Clerks, Stevedore's Foreman, etc., Charterers paying at the current rate per meal, for all such victualling.

11. That the Charterers shall furnish the Captain from time to time with all requisite instructions and sailing directions, in writing, and the Captain shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or their Agents, and furnish the Charterers, their Agents or Supercargo, when required, with a true copy of daily Logs, showing the course of the vessel and distance run and the consumption of fuel.

12. That the Captain shall use diligence in caring for the ventilation of the cargo.

13. ~~That the Charterers shall have the option of continuing this charter for a further period of~~ ……………………

……………………………………

~~on giving written notice thereof to the Owners or their Agents [illegible] days previous to the expiration of the first-named term, or any declared option.~~

14. ~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

See Clause 40

15. That in the event of the loss of time ~~[illegible]~~ fire, breakdown or damages to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, drydocking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost; and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, the time so lost, and the cost of any extra fuel consumed in consequence thereof, and all extra expenses shall be deducted from the hire. See Clause 41

16. That should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once. The act of God, enemies, fire, restraint of Princes, Rulers and People, and all dangers and accidents of the Seas, Rivers, Machinery, Boilers and Steam Navigation, and errors of Navigation throughout this Charter Party, always mutually excepted.

The vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.

17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at [illegible] one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them [illegible]

[illegible]

The vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.

17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

18. That the Owners shall have a lien upon all cargoes, and all sub-freights for any amounts due under this Charter, including General Average contributions, ~~[illegible]~~ [illegible] will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents which might have priority over the title and interest of the owners in the vessel.

19. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit after deducting Owners' and Charterers' expenses and Crew's proportion. General Average shall be adjusted, stated and settled, according to ~~[illegible]~~ York-Antwerp Rules 1924 at such port or place in the United States as may be selected by the carrier, and as to matters not provided for by these Rules, according to the laws and usages at the port of New York. In such adjustment disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery. Such deposit shall, at the option of the carrier, be payable in United States money and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the General Average and refunds or credit balances, if any, shall be paid in United States money.

~~[illegible]~~

Provisions as to General Average in accordance with the above are to be included in all bills of lading issued hereunder.

20. Fuel used by the vessel while off hire, also for cooking, condensing water, or for grates and stoves to be agreed to as to quantity, and the cost of replacing same, to be allowed by Owners.

21. ~~[illegible]~~

No drydocking during this Charter.

22. Owners shall maintain the gear of the ship as fitted, providing gear (for all derricks) capable of handling lifts up to [illegible] also providing ropes, falls, slings ~~[illegible]~~. If vessel is fitted with derricks capable of handling heavier lifts, Owners are to provide necessary gear for same, otherwise equipment and gear for heavier lifts shall be for Charterers' account. Owners also to provide on the vessel ~~[illegible]~~ for night work, and vessel to give use of ~~[illegible]~~, but any additional lights over those on board to be at Charterers' expense. The Charterers to have the use of any gear on board the vessel.

Three rated capacity

electric light

23. Vessel to work night and day, if required by Charterers, and all winches to be at Charterers' disposal during loading and discharging; ~~[illegible]~~. If the rules of the port, or labor unions, prevent crew from driving winches, shore Winchmen to be paid by Charterers. In the event of a disabled winch or winches, or insufficient power to operate winches, Owners to pay for shore engine, or engines, in lieu thereof, if required, ~~[illegible]~~ and hire to be reduced proportionally to the number of disabled winches.

Owners [illegible]

Continue 3 (three) winchmen from crew during day and night. If overtime required, then Charterers will pay for it, and where winchmen not obtainable.

24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels, etc.," in respect of all cargo shipped under this charter ~~[illegible]~~

~~[illegible]~~

~~[illegible]~~ 16, 1936, which shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further.

Both-to-Blame Collision Clause

If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.

25. The vessel shall not be required to enter any ice-bound port, or any port where lights or light-ships have been or are about to be withdrawn by reason of ice, or where there is risk that in the ordinary course of things the vessel will not be able on account of ice to safely enter the port or to get out after having completed loading or discharging.

26. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The owners to remain responsible for the navigation of the vessel, insurance, crew, and all other matters, same as when trading for their own account.

27. A commission of 2½ per cent is payable by the Vessel and Owners to Frachtkontor Junge & Co, Hamburg and Nordstrom & Thulin Rederiagentur Ab, Stockholm, for equal division, on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter.

28. ~~[illegible]~~ ~~[illegible]~~

[illegible] of her [illegible] by reason of ice, or where there is risk that in the ordinary course of things the vessel will not be able on account of ice to safely enter [illegible] any ice-bound port, or any port where lights or light-ships have been or are about to be withdrawn [illegible] the port or to get out after having completed loading or discharging.

26. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The owners to remain responsible for the navigation of the vessel, insurance, crew, and all other matters, same as when trading for their own account.

27. A commission of 2½ per cent is payable by the Vessel and Owners to Frachtkontor Junge & Co, Hamburg and Nordström & Thulin Rederiagentur AB., Stockholm, for equal division, on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter.

28. ~~[illegible]~~

~~[illegible]~~

~~The original Charter Party in our possession.~~

~~BROKERS.~~

As..............................For Owners

Clauses 29 - 43, both inclusive, as attached hereto, are deemed to be fully incorporated in this Charter Party.

FERROSTAAL
A.-G.
Abt. Verfrachtung

D Jones

491a

192a

Frachtcontor Junge & Co.
[illegible]
2 Hamburg 1, Ballindamm 17
Tel. [illegible]

[illegible]
BOLAGEN

M/S [illegible]

ADDITIONAL CLAUSES TO CHARTER PARTY DATED STOCKHOLM 5th of MARCH, 1970

29. New Jason Clause and Both-to-Blame Collision Clause as attached hereto shall form part of this Charter Party and to be included in all Bills of Lading issued hereunder. All Bills of Lading are further subject to United States and Canadian Paramount Clause, as attached.

30. Owners to keep Charterers closely advised of Vessel's position.

31. Although it is agreed that Charterers are to redeliver the vessel in the same condition as on delivery, wear and tear excepted, it is the duty of the Master to inform Charterers as soon as he had discovered any stevedore damage, latest on completion of discharge. It is also the Master's duty to serve prompt notice of claim in writing upon a party responsible for any damage which can be ascertained.
Copies of such notices to be sent promptly to Charterers.

32. The Vessel is registered with Norwegian Veritas.

33. The Owners shall keep Charterers indemnified to the same extent that Owners would be if working the vessel for their own benefit in the trades in which the vessel is employed by the Charterers, against all such claims and risks as are covered by their Protection and Indemnity Association. Owners shall afford Charterers the benefits of any other association for defence or other purposes, in which the vessel may be entered, always understood as far as the rules of Owners' P. & I. Club and insurance policies allow. Any extra insurance premium to extend to Charterers Owners cover, to be for Charterers account.

34. If the country of the flag of the vessel becomes involved in a war with any of the major powers, the Owners and/or Charterers shall have the option of cancelling this Charter.

Sign B/L

35. If required, by Charterers, the Master, the Charterers and/or their nominees or agents are hereby authorized by Owners to sign on Masters and/or Owners behalf, Bills of Lading according to Mate's (x) or Tally clerks receipts without prejudice to this Charter Party.

36. Description of Vessel:
Norwegian Flag, built 1966, About 20.050 Long tons dwat on abt. 31'9-1/4"sfw
Abt. 859.000 cbft grain in mainholds, Abt. 98.000 cbft grain in bleeding wing tanks suitable for grain.
6 Holds/6 Hatches, all of following dimensions:
13,600 m x 11,040 m (44'7-1/2" x 36'10-1/4")
12 derricks, length 15 metres (49'2-1/2")
12 winches
Max. load 10 tons for single derrick rigged with double cargo runner
Derricks rigged in "Union Purchase" (coupled derricks):
load 5 tons, outreach from ship's side 23'-8"
" 6 " " " " " 20'-0"
" 6,5" " " " " 19'-0"

1930

Frachtcontor Junge & Co.
Schiffsmakler
2 Hamburg 1, Ballindamm 17
Tel. 32 22 81, [illegible]

[illegible]
BOLAGEN

37. International Labour Organization Safety Clause

It is understood that, if necessary, vessel will comply with any safety regulations and/or requirements in effect at ports of loading and/or discharging, particularly the United States Department of Labour, Safety and Health Regulations set forth in part 3 of Federal Register. Although other provisions of this Time charter make it the responsibility of the Owners, it is agreed that should the vessel not meet the rules and regulations, Owners will make immediately corrective measures and that any stevedores' standby time and expense involved including off-hire will be for the Owners' account. Vessel has valid certificatesincluding cargo gear.

38. On-hire survey to be carried out in Charterers time and for Charterers account, off-hire survey to be carried out in Owners' time and for Owners' account.

39. Crews overtime to include the following services:

1. Raising and lowering derricks in preparation for loading and/or discharging.
2. Opening and closing hatches in preparation for loading and/or discharging, if permitted by local labour regulations.
3. Removing and replacing beams in preparation for loading and/or discharging.
4. Supervision of loading and/or discharging.
5. Maintaining steam while loading and/or discharging and care of winches.
6. Docking and undocking.
7. Bunkering
8. Officers and crew to shape up the vessels: hatch and derricks as much as possible prior to arrival at loading and/or discharging docks or place so as to immediately commence loading and/or discharging operations.

40. In line 97 after the words "loss of time" the following wording is to be inserted: "arising or resulting from any strike or work-stoppage by vessel's Master, Officers, or Seamen, whether practical or general, from deficiency or default of men, lockout of men or deficiency of or defect of stores, sickness of men, or accidents to any of the crew.

41. In line 101 after the words "from the hire" the following wording is to be inserted: "should the vessel change her intended voyage by reason of any of the aforementioned causes and put into any other ports than those to which she is bound under instructions of Charterers, the hire shall be suspended from the time of such change until the vessel is again in the same position and the voyage resumed therefrom.

42. In line 25 after the word "excluding" insert the following"Arms, ammunition, asphalt, pitch, ammonium nitrate, explosives, logs, scrap, salts, acids, unless mutually agreed.

43. Victualling

The Captain is to approve the victualling of authorized persons and proper vouchers signed by recipient of meals are to be submitted to Charterers for settlement. Authorized persons to include Pilots, Customs Officers, and when Authorized by Charterers or their agents, Tally Clerks, Stevedores Foremen.

44. Captain's co-operation with Charterers agents

Captain on behalf of the Charterers to initiate efficient port dispatch of Vessel by co-operation with Charterers agents and in event of delay in port for any reason, lack or ready berth or facilities for maximum efficiency for loading and/or discharging, bunkering, weather, shortage of shore labour, barges, wagons, trucks, railcars causing or threatening to cause delay in loading or discharging, shortage of pilots, towboats, necessity for stevedores overtime to maintain schedule, Captain is to telegraph Charterers immediately to request instructions.

45. Deviation

Should the vessel put back on a voyage by reason of an accident or breakdown, the hire shall be suspended plus value of bunker fuel consumed, from time of her putting back until she is again in the same position or a position equidistant and voyage resumed therefrom. Any deviation of vessel for purposes of crew deficiences or illness and/or vessel's business to be entirely for Owners' account including hire, fuel and port charges incurred.

46. The Charterers and Owners agreed that on delivery and redelivery about 100 tons IFO and about 30 tons diesel oil will be charged at the stipulated bunker prices, viz. US $ 14.00 for IFO and US $ 20.00 for diesel oil, whilst for the additional 150 tons IFO to comply with the special minimum 250 tons IFO, on delivery.

47. Present War Risk Insurance and Crew War Bonus to be for Owners' account. In the event of an increase in War Risk Insurance premium after delivery for the trade in which the vessel is engaged but based on vessel's present Hull and Machinery valuation of , to be for Charterers account. Any increase in Crew War Bonus after delivery caused by the trade in which vessel is engaged as recognized by Norwegian Government to be for Charterers' account.

48. Extra insurance for trading in Great Lakes for Charterers' account. Charterers' option trade vessel outside IWL against paying additional premium as may be charged by vessels Underwriters.

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EXHIBIT "B"

In consideration of the following rates and conditions Seven Seas Shipping agrees that Great Lakes International will be their exclusive Stevedore in the Port of Cleveland for the 1970 Season.

1. Great Lakes International will guarantee one berth will be available

2. Once gangs have worked on a ship we will not reduce the number of gangs unless directed by the Steamship Line or a breakdown of equipment forces us to stop working. Maximum 1 gang to a hold.

3. We will provide all gear necessary for normal stevedore operation.

4. Linesmen for Seven Seas account.

5. Seven Seas guarantees 100,000 ton.

Steel coils	unload	$2.25
Steel coils	load	2.50
Plates bundled		3.75
Merchant steel		4.25
Wire rod		3.85

6. All provisions contained in Stevedore Tariff and Marine Terminal Tariff will apply.

7. Any rain time 1/2 hour or longer will be for the account of Seven Seas

8. Extra Service will be for the account of Seven Seas. A work order must be signed by responsible party (agent or thru New York office.)

9. Securing on Exports ships will be 10¢ a ton. This will be for normal securing as determined by National Cargo Bureau.

10/ There will be a premium of 10% on the rate per ton on all tonnage unloaded after 5PM Monday to Friday (holidays excluded) to pay for longshoreman's overtime.

11. Overtime Saturday - Sunday and Holidays account of Seven Seas or outside party ordering same.

12. Payment will be made no later than 30 days after invoice date.

13. Dockage and Wharfage for the account of Seven Seas. If the dockage or wharfage is lowered the difference to existing rates will be added to the tonnage rates submitted.

President Seven Seas Shipping

EXHIBIT "C"

PLAINTIFF
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

7 id

FPI-NI—4-6-74-30M-2001

199a

BILL OF LADING

UNIFORM BILL OF LADING 1946
approved by
The Documentary Council of The Baltic and International Maritime Conference.
To be used with Charter Parties.
Code Name: Congenbill.

Shipped at Cleveland, Ohio
in apparent good order and condition by Fimpex International Inc.
of New York, N.Y. on board the good Vessel called the M.V. Polarland
for carriage to Antwerp, Belgium
or so near thereto as she may safely get, the following goods:

Franklin National Letter of Credit U 52215

Marks & Nos Gross Weight Size in MM (Thickness & Width) Coil Number Heat Number	Cold Rolled Coils premier choix qualite Commercial material Non Recuit Non huile 59 Coils 0.8 x 1002 MM 536.805 KILOS Freight - Prepaid
// White	Notify: S.A. Fabrique de Fer de Maubeuche B.P. 100, 59 Maubeuge (France)
	also notify: Thoumsin, Antwerp
	Outer wrappers athmosperically rust stained Outer wrappers slightly damaged Some bands damaged and/or missing

United States [illegible]
[illegible]
[illegible]

(of which NONE on deck at Shippers' risk; the Carrier not being responsible for loss or damage howsoever arising) which are to be delivered in the like good order and condition at the aforesaid Port of Antwerp unto Order of Shipper
or his or their Assign(s), he or they paying freight ~~at the rate of~~
~~(say per)~~ as per Charter-Party, dated March 5, 197-

All the terms, conditions, liberties, and exceptions of the Charter-Party are herewith incorporated. Except No Dispatch to Consignee

This Bill of Lading shall have effect subject to the provisions of any legislation relating to the carriage of goods by sea which incorporates the rules relating to Bills of Lading contained in the International Convention, dated Brussels 25th August, 1924 and which is compulsorily applicable to the contract of carriage herein contained. Such legislation shall be deemed to be incorporated herein, but nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities thereunder. If any term of this Bill of Lading be repugnant to any extent to any legislation by this clause incorporated, such term shall be void to that extent but no further. Nothing in this Bill of Lading shall operate to limit or deprive the Carrier of any statutory protection or exemption from, or limitation of, liability.

Freight Advance.
Received on account of freight:

Weight, measure, quality, quantity, condition, contents and value unknown.
IN WITNESS whereof the Master or Agent of the said Vessel has signed
Bills of Lading all of this tenor and date, any one of which being accomplished the others to be void.

B/L No 2

New York, N.Y. the 12th May 19 [illegible]
World Shipping Inc. as Agent only
by Authority of the Master

J. Reynolds

Between Messers Ferrostal A.G. of Essen
and [illegible] Shipping Corp. of New York

200a

EXHIBIT "D"

A 1 201a

NAME NIMPEX INTERNATIONAL
4/30/70 ADDRESS 745 ~~551~~ FIFTH AVENUE
NEW YORK NEW YORK

ATTN... ~~MR. MARTIN RESNICK~~

SHEET NO.
RATING
CREDIT LIMIT

1970

DATE	FOLIO	DEBIT	CREDIT	BALANCE	OLD BALANCE
10/14/70 MAY 13 70	34,186 ✓	3,589.32 5/7		3,589.32 s	
PEN- MAY 28 70	36,630 ✓	2,405.17 5/7			
GALL MAY 28 70	36,631 ✓	237.00 6/15		6,231.49 s	[illegible]
CK- AUG 17 70	9,589		5,994.49	237.00 s	[illegible]
38,863 SEP 11 70	65,744 ✓	44.81 10/14-70 [illegible]		281.81 s	[illegible]
PLRLND SEP 22 70	7,558	648.33 ch. 80,735		/	
PIGALL SEP 22 70	7,560	207.09 ch. 80,735		1,137.23 s	281.81
CK OCT 14 70	1,313		44.81	1,092.42 s	[illegible]
CK OCT 15 70	10,083		237.00	855.42 s	[illegible]
1971					
7,558 JUN 16 71	80,735 CK				
7,560 JUN 16 71	80,735 CK	855.42 <		.00 s	
44,291 JUN 16 71	70,331 ✓	5,168.08 5/3		5,168.08 s	
CK AUG 3 71	11,607		5,168.08	.00 s	

202a

EXHIBIT "E"

203a

NAME SEVEN SEAS SHIPPING CORP
ADDRESS 745 FIFTH AVE
NEW YORK NY 10022

ATT M. FRIEDMAN

SHEET NO. A /
RATING
CREDIT LIMIT

1970 Jelly [illegible]

DATE	FOLIO	DEBIT	CREDIT	BALANCE	OLD BALANCE
POLAR LAND MAY22 70	36,788	12104.24 [illegible]		12104.24 S	
" MAY28 70	36,629	26.17 [illegible]		12130.41 S	12104.24
POLAR- LAND JUN 9 70	7,084	9,655.45 c/m 80554			
JUN 9 70	7,085	4,620.24 c/m 80553 & 80589 [illegible]			
" JUN 9 70	7,087	22.88 c/m 80697			
" JUN 9 70	7,095	6,678.87 1/25 Nimpex ck		33,107.85 S	[illegible]
PENGL JUN10 70	7,098	6,625.83 1/25 Nimpex ck		39,733.68 S	[illegible]
LIST JUL13 70	80,510 CM	2,130.41 ◇		27,603.27 S	[illegible]
PENGL JUL29 70	7,382	9,913.67 c/m 80555		37,516.94 S	[illegible]
PENGL JUL30 70	7,383	2.69 c/m 80555		37,519.63 S	[illegible]
POLAR AUG14 70	7,436	1,335.77 1/26 } ck. by Nimpex			
PENGL AUG14 70	7,442	1,325.17 1/26		40,180.57 S	[illegible]
7,085 AUG14 70	80,553 CM-	235.36 ◇			
7,084 AUG14 70	80,554 CM	9,655.45 ◇			
7382 AUG14 70	80,555 CM				
7,383 AUG14 70		9,916.36 ◇		20,373.40 S	[illegible]
7,085 SEP22 70	80,589 CM	4,384.88 ◇		15,988.52 S	[illegible]
CK SEP25 70	10,031 BY NIMPEX INTRNL		13,304.70	2,683.82 S	[illegible]
CK SEP26 70	10,038 NIMPEX INTRNTL		2,660.94	22.88 S	[illegible]
1971 7,087 MAY 5 71	80,697 CM	22.88 ◇		.00 S	

204a

EXHIBIT "F"

205a

PLEASE TAKE NOTICE that

of which the within is a copy, was this day duly entered and filed in the within entitled action in the office of the Clerk of

Borough of
in the City of New York.
Dated, New York, 19

Yours &c.,

HAIGHT, GARDNER, POOR & HAVENS
Office and Post Office Address:
One State Street Plaza,
Borough of Manhattan,
New York, N. Y. 10004

for

To

for

72 Civ. 377[illegible] ([illegible])

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SIMPEX INTERNATIONAL INC.,
TRAVELER'S INDEMNITY COMPANY,
Plaintiffs,

-against-

SS POLARLAND, her engines,
boilers, etc., D/S A/S VESTLAND,
RICH. AMLIE & CO., A/S, SEVEN
SEAS SHIPPING CORP., and
FERROSTAAL, "GMBH" (corporate
chacterization fictitious,
defendant intended is explained
in Schedule A of the Complaint),

Defendants.

REQUESTS FOR ADMISSION
UNDER RULE 36 OF THE
F.R.C.P.

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendants
D/S A/S Vestland and Rich.
Amlie & Co. A/S
One State Street Plaza
Borough of Manhattan
New York, N. Y. 10004
DIgby 4-6800

Due service of the
within
is hereby admitted.
New York, 19
for

PLEASE TAKE NOTICE that

of which the within is a copy, will be presented for settlement and signature to the Hon.
one of the of this Court at

Borough of
City of New York, on the day of
, 19 , at M.
Dated, New York, 19
Yours &c.,
HAIGHT, GARDNER, POOR & HAVENS
Office and Post Office Address:
One State Street Plaza,
Borough of Manhattan,
New York, N. Y. 10004
for

To

for

2056

DEF. SEVEN SEAS RESPONSE
TO POLARLAND REQUEST
FOR ADMISSIONS

206a

PF
Mailed - 8/23/74
Filed - 8/29/74

MS. ATTY'S No.
11-28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

NIMPEX INTERNATIONAL INC.,
TRAVELER'S INDEMNITY COMPANY,

Plaintiff,

-against-

SS POLARLAND, her engines, boilers, etc. D/S A/S VESTLAND, RICH. AMLIE & CO., A/S SEVEN SEAS SHIPPING CORP., and FERROSTAHL, "GmbH" (corporate characterization fictitious, defendant intended is explained in Schedule A of the Complaint),

Defendants.

- X

72 CIV. 3779 (EW)

ANSWER TO REQUEST
FOR ADMISSIONS
UNDER RULE 36 OF THE
F.R.C.P.

WPH
ESS

Defendant, SEVEN SEAS SHIPPING CORPORATION, responding to the Request for Admission by Defendants, D/S A/S VESTLAND and RICH. AMLIE & CO., heretofore served on July 29, 1974, states:

1. Defendant, Seven Seas Shipping Corporation has knowledge of the fact that a bare boat charter of the Motorship POLARLAND existed between its Owner, D/S A/S VESTLAND, (Rich. Amlie & Co. A/S), and MOLENA TRUST INCORPORATED, but it has been unable to determine if the document attached as Exhibit A to Defendant's Request for Admission is a true copy of such charter and, therefore, must deny that it is such an authentic and genuine copy as requested.

2. Admits that the document attached as Exhibit B to the Request for Admission of Defendant, is a copy of a charter party between Molena Trust Incorporated and Messrs. Ferrostaal AG.

3. Admits that the document attached as Exhibit C to defendants' request for admission is a copy of a contract

C-7609

between Seven Seas Shipping Corporation and Great Lakes International Corporation.

4. Admits the statement set forth in the Request for Admission as Item No. 4.

5. Admits the statement set forth in the Request for Admission as Item No. 5.

6. Denies the statement set forth in the Request for Admission as Item No. 6, as it is unable to verify whether or not said bill of lading was signed by J. Reynolds.

7. Denies any knowledge as to the authenticity and genuiness of the document attached as Exhibit E to the Request for Admission.

8. Denies any knowledge as to the authenticity and genuiness of the document attached as Exhibit F to the Request for Admission.

9. Denies any knowledge with regard to the statement set forth in the Request for Admission as Item No. 9.

Dated, New York, New York,
August 28, 1974

KIRLIN, CAMPBELL & KEATING
By Sgd Edward L. Smith
A Member of the Firm

Attorneys for Defendant,
Seven Seas Shipping Corporation,
120 Broadway
New York, New York, 10005
732-5520.

TO:
HAIGHT, GARDNER, POOR & HAVENS,
Attorneys for Defendants,
D/S A/S VESTLAND and Rich.
Amlie & Co. A/S,
One State Street Plaza,
New York, New York, 10004;

DONOVAN, DONOVAN, MALOOF & WALSH
Attorneys for Plaintiff,
161 William Street,
New York, New York, 10038

2080

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NIMPEX INTERNATIONAL INC.
TRAVELER'S INDEMNITY COMPANY

Plaintiff

against

S.S. POLARLAND, her engines etc
D/S A/S VESTLAND, RICH. AMLIE
& CO., A/S SEVEN SEAS SHIPPING
CORP., and FERROSTAHL, "GmbH"
(corporate characterization
fictitious, etc) DEFENDANTS

ANSWER TO REQUEST FOR ADMISSION

KIRLIN, CAMPBELL & KEATING

Attorneys for Defendant
SEVEN SEAS SHIPPING CORPORATION
ONE TWENTY BROADWAY,
NEW YORK, N. Y. 10005

(212) 732-5520

TRANSCRIPT OF PROCEEDINGS
OF JUNE 19, 1974

NIMPEX INTERNATIONAL, INC.

vs. 72 Civil 3779

S.S. POLARLAND, her engines, etc.,
D/S A/S VESTLAND, RICH AMLIE &
CO., A/S SEVEN SEAS SHIPPING
CORP.

June 19, 1974
10:00 a.m.

(Trial resumed.)

THE COURT: We seem to be missing some counsel.

(Pause.)

GILLES HEUREUX, resumed, testifying through the French interpreter, Ike Trabout, as follows:

REDIRECT EXAMINATION CONTINUED

BY MR. GOODENOUGH:

Q Mr. Heureux, in the course of discharging the Nimpex coils from the Polarland, were spreaders used on the tackles to keep the cable away from the coils?

MR. WALKER: I object to the form of the question.

THE COURT: Overruled.

A What was the last part?

Q Were spreaders used to keep the cables away from the coils?

A We don't use, you see, you never use spreaders because the cables, under no circumstances, come into

210a

contact.

Q Did you see all coils discharged from the vessel?

A Yes.

Q Did you see any ovalization occur during the course of discharge?

A No.

Q Do you have an opinion with respect to whether the discharging operations at Antwerp, in off loading the Nimpex coils from the Polarland, caused or contributed to the damage that you found in the coils?

A Yes.

Q What is that opinion?

A Under no circumstances is stevedoring employing adequate equipment did not contribute to the damage.

Q Is Mr. Duytschaever still in Antwerp?

A Yes.

Q Is he working there?

A Yes.

Q If you know, what kind of work does he do?

A The same work as we do; that is, expert in merchandise.

Q Mr. Heureux, is there a difference between hot rolled steel and cold rolled steel?

A Yes.

Q What is that difference?

A Yes. Now, the hot rolled steel is hot laminated; that is to say, it goes, the raw material goes through two hot rolls and the steel goes through, the laminated steel goes through the hot rolls.

Whereas, in order to get cold rolled steel, you would have to go through the process of hot rolled first.

In other words, you get cold rolled from hot rolled steel.

Q Do you ever get hot rolled from cold rolled steel?

A No.

Q Did the testimony Mr. Walker referred to yesterday, which you gave concerning another matter, pertain to cold rolled steel?

A No, sir.

Q Mr. Heureux, do you know how the coils, the Nimpex coils, were to be used by the ultimate consignee?

A To galvanization.

Q If the coils were ovalized, how would that affect the finished product, if you know?

A First, you have the use of the coils in the factory itself, as a first step. In addition to that,

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afterwards, when they are opened up and unrolled during the process of the galvanization, one may find the defect of the galvanization, of the coils, when you open it.

And at this moment, whatever you do with the galvanized sheets, will find its defect, wherever you use it.

Q And the defect occurring through ovalization, will follow the product through its production into a final product?

A Yes.

Q Does correcting ovalization by the stevedore method of jacking, correct any damage to the coils due to ovalization?

A This, no. I must say that this is a method to disguise something.

Q But the damage due to ovalization will remain?

A It all depends how you use the word "ovalization." Now, if the ovalization stays there after -- no matter what you do to it, it will show eventually in the sheets, galvanized sheets; it will be permanent.

Q Concerning the 16 coils that were sold for salvage because of their ovalization, was the damage to those coils due to ovalization of such a permanent nature, that it could not be used in the production intended?

MR. WALKER: I object to the form of the question.

THE COURT: Sustained as to form.

Q Mr. Heureux, concerning the 16 coils that were sold for salvage because of the ovalization condition, do you have an opinion as to whether that condition would have been manifested in the final product?

A Yes.

Q What is that opinion?

A As I stated before, these coils, regardless of the percentage of ovalization,present a permanent deformation.

Q Mr. Heureux, were there coils other than the 16 that were salvaged which also had an ovalization problem?

A Yes.

Q Did the consignee accept those coils?

A Yes, provided--or on the basis of an allowance for certain of them.

Q Mr.Heureux, you note in your report that a positive silver nitrate test, indicating saline content, was found with respect to some coils.

Does it contribute to the damage done to those coils?

THE INTERPRETER: Sodium nitrate, did you say?

Q Silver nitrate.

A No.

Q Why not?

A Because the silver nitrate is used in order to reveal the presence of chloride; this chloride normally contained in high seas or in salt water. Then you must allow some time in order to see if this chloride has an incidence on the steel, which means that if there were eventually an infiltration at sea, that is to say, it did not have enough time, that is, for the sea water to remain enough in contact with the coils.

Furthermore, the final consignees were in a hurry to use these coils; they were extremely in a hurry to use these coils; therefore, we had no time either way, either for the water to remain enough in contact with the coil, plus the element of the rush on the part of the consignee.

Q You testified that you saw only six ovalized coils in the lower tier of the hold. How do you account for finding 16 ovalized coils on the pier?

A First of all, I should like to remark, first, that there were more than 16. Secondly, as I explained yesterday, I did not remain permanently in the hold.

Furthermore, in order to discover the ovalization, you have to remove, at any rate, part of the packing, in order to measure; because this heavy side packing was wrinkled in such manner that you could not see whether there were a deformation or an ovalization.

Q Mr. Heureux, did you sail as a chief officer?

A Yes.

Q What are the duties of a chief officer with regard to cargo?

MR. WALKER: Objection.

THE COURT: What's the ground?

MR. WALKER: I don't believe he's been qualified to testify as an expert on the duties. He was produced as a steel surveyor, and now he is going to testify as a maritime expert. I don't believe he's been qualified in that respect.

MR. GOODENOUGH: Your Honor, Mr. Walker conceded the qualifications.

MR. WALKER: Conceded his qualifications as an expert surveyor.

MR. GOODENOUGH: At the point he was conceding the qualifications, Mr. Heureux was relating to us his marine education.

THE COURT: As I recall it, he went to sea for a number of years, did he not?

MR. WALKER: Yes, indeed.

THE COURT: All right. Qualify him as an expert and we'll decide whether or not he is qualified.

Q Mr. Heureux, have you had any maritime education?

A Yes.

Q Would you describe --

THE COURT: We went through that yesterday.

See how long he went to sea and what officers' certificates he held.

We are really spending a lot of time on this.

Q Mr. Heureux, have you ever sailed?

A Yes.

Q What tickets or licenses did you hold, if any?

A I was a captain on a ship.

Q Were you ever a chief officer on a ship?

A Yes.

Q For how many years have you sailed?

A Approximately 14 years,including schooling, when I was in maritime school, navigation, and all that.

Q How many years did you sail as a first officer?

A Approximately one year.

Q During the course of your duties as a first officer, did you ever have occasion to handle cargo?

A This is the function, if not one of the functions, of the first officer.

Q Mr. Heureux, if you were the first officer aboard the Polarland and you received the coils as reflected in the photos in Plaintiff's Exhibit 12, would you have put the following notations on the bills of lading: --

MR. WALKER: I object to the form of the question.

THE COURT: I'll allow you to ask your question: What notation he would have put on the bill of ladings.

MR. SANFILIPPO: I would object on the basis that these photographs were taken at discharge, not loading.

THE COURT: Of course, there is no proof that that condition was there at the time of loading, but he's assuming a state of facts as to which no proof has been offered as yet, and I am aware of that.

So, bear that in mind, counsellor. I am aware there is no proof of the condition in which they were found upon the outturn, with the condition on which they were placed on board the vessel.

You will have to offer proof as to that. I am allowing the question.

Q I'll repeat my question:

If you were the chief officer aboard the Polarland, and you received the coils as reflected in the photos, Plaintiff's Exhibit 12, what notations, if any, would you have put upon the bills of lading?

THE WITNESS: In any case, "packing," let's say like it is -- "packing partly rusty."

I don't read it --

MR. WALKER: Objection. There is a colloquy going on between the witness and the interpreter.

THE COURT: I think he's trying to understand what he is saying.

Do you have the question, Mr. Interpreter? That's the problem.

Don't you answer the question in English. You are attempting to answer in English and we have an interpreter here for that purpose.

A The reason why I answered in English is, at any rate, under my circumstances, when you have to put remarks on the bills of ladings, you have to do so in the English language.

Now, when you asked me the question, I would have put those exact words in English; not in French, but in English.

THE COURT: Now, will you answer the question, what notation would you have made on the bill of lading?

A I can explain this in French. The packing was rusty. There were some of the circling of the packing broken.

MR. GOODENOUGH: I think he misunderstands the question.

MR. WALKER: Objection, your Honor. That's Mr. Goodenough's interpretation. I think we should have the answer.

A In addition to that, I have noticed the damages, particular damages on each coil; that is to say, ovalization, the wrapping or packing torn, damage, and anything else if there were.

MR. GOODENOUGH: I have no further questions of this witness.

THE COURT: Mr. Walker?

RECROSS-EXAMINATION

BY MR. WALKER:

Q Now, the case you testified on last year, in February, in Antwerp, was a case involving ovalization of hot rolled coils, is that correct?

A Yes.

for other things than you use with the hot rolled steel.

Q Do I understand your testimony to be that, had you been the chief officer on the Polarland and had you received the coils as depicted in your photograph, Exhibit 12, you would have made a notation on the bill of lading to the effect that the wrappers were rusty; that some of the bands were broken; and that the coils were ovalized as to those that were ovalized?

A Yes, and the first officer is compelled to write on the bills of lading the status or the state or condition under which he saw the merchandise.

Q Now, referring to Exhibits 4, 5 and 6, if I understand you correctly, then, the only thing that the chief officer on the Polarland omitted was the mention of ovalization; is that correct?

A No.

Q It is not correct?

A No.

Q What did he fail to put on the bill of lading that should have been put on the bill of lading?

THE WITNESS: The first and the third remarks are okay, but the second one they are speaking only about the packing.

(In English) But the condition of the cargo as it is, if there is damage to the content, you have to describe it also; I mean handling damages.

Q When the cargo is wrapped, you can't see the inside of the contents; you can't see the contents, can you?

A This is true, except if the wrapping or the packing is torn or broken; then you can see within.

Q Well, isn't there a notation that the wrappers were torn on the bill of lading? Refer now to the Exhibits 4, 5 and 6.

A The man that used these particular words, "slightly damaged," this could mean that they could have been slightly torn, broken, the outer wrapper, the packing or even -- what's the word he used -- "undulated."

Q "Undulated"?

A Yes. Waved.

THE WITNESS: (In English) May I tell him -- "buckling"?

THE COURT: Does "buckling" come under the definition of "oxidation"?

A No. "Oxidation" is rust.

"Buckling" means that the sheet metal or sheet steel is twisted, but due to an accident.

Q Did you mention "buckling damage" in your survey report? Did you use the word "buckling" in your survey?

A "Buckling" is --

MR. GOODENOUGH: Objection. The survey speaks for itself. It's admitted into evidence.

THE COURT: This is cross. He may ask that.

MR. WALKER: May I see the exhibit, please?

Q Here is your report, Mr. Heureux. Refer now to Plaintiff's 11.

A Yes. The first page, as a matter of fact,"all coils partly buckled."

Q All coils partly buckled?

A "Packing partly buckled."

Q That's not coil, though, is it?

A No.

Q The wrapping, the packing is thrown away, isn't it? It has no use, does it?

A I am totally in agreement with that, but when I write this as a first officer, I have to clarify it and give you a description, as a first officer.

MR. WALKER: No further questions.

THE COURT: Mr. Sanfilippo?

MR. SANFILIPPO: May I ask a few questions?

RECROSS-EXAMINATION

BY MR. SANFILIPPO:

because, otherwise, if you use the word "flatten," then I take it, that the whole thing is totally flat, and then I have to use "flat."

In my report, I indicated an approximation of two inches of ovalization, and that's the reason for which we made an allowance. You can use any word you wish.

MR. SANFILIPPO: Your Honor, I move that the answer be stricken as not responsive.

THE COURT: I'll allow it to stand. Put the question again.

Q Mr. Heureux, I would like to have just a yes-or-no answer, if it's possible.

Assuming these papers to be a coil of sheet metal as we have in the shipment, and you classified it as "ovalized"because the center here was two inches flat --

A Yes.

Q -- would that ovalization affect the quality of the metal of that coil?

A I'm sorry, I cannot answer. It's not because you are showing me something like that, that I have to indicate to you that the merchandise is damaged. You see, you are showing me a paper, but I have to see the merchandise.

Q Well, would the fact that the roll is slightly flattened out, would that affect the metal itself?

A Not necessarily.

Q If you are able to take that roll and stretch it out, this metal could be used for whatever purpose it was to be used, couldn't it?

A Yes, but if you have a permanent deformation which you will find in the metal, you will find it eventually in the metal.

Q Would an ovalization of two inches have such an effect on the metal?

A Once again, not necessarily.

Q So, my question is, if it were possible--it's probably not practical--but if it were possible to take that coil and stretch it out on a great big table, that material still could be used for all intents and purposes as originally intended, couldn't it?

A Yes, you can always use the material and the material is not necessarily totally lost.

Q In view of that fact, could you not have made an allowance for the loss of utility of the material in a roll rather than sell it on an as-is, where-is condition?

A I don't understand the question very well.

Q You have testified that the metal itself would still be usable as originally intended?

A Yes.

Q In view of that fact, was it necessary that the coils which were ovalized be sold on the best terms possible?

A In the question of an expert report, you have two ways in order to give the condition of the coil -- two ways of doing it:

The first of them is, you propose to the ultimate consignee, a lesser value. In the event that he does not accept that, we have at least at Antwerp, we have this, the possibility of selling the coils. The difference of the cost of the merchandise and the sale is the depreciation of the merchandise.

Q Now, when you saw "these 16 ovalized coils," did you ask or did you give to the ultimate consignee, a depreciated value at which he could accept them?

A I asked him whether he was ready and willing to accept an offer, and he refused.

Q Was there an offer made?

A No. I only asked him, "If you are given an offer, are you ready to accept it."

Q Then the consignee did not know what the amount of the offer would be, whether it would be ten percent or 90 percent, did he?

A I don't think the ultimate consignee was concerned with a nine or ten percent allowance. What he was concerned, as a matter of fact, was the good condition of the merchandise.

Q Yes, but the question is, he did not know what the depreciation allowance would have been before he gave the answer of rejecting it.

A Whether the offer of an allowance is ten percent or 90 percent, the consignee would still have difficulties selling those 16 damaged coils to his customers.

MR. SANFILIPPO: I have no questions.

THE COURT: I have one or two questions I would like to ask the witness:

Now, this shipment consisted of cold rolled steel?

A Yes.

BY THE COURT:

Q And it was rolled up in coils.

A Yes.

Q They were stripped of steel, were they not, rolled up in coil form?

A Yes, your Honor. It is a cold process; cold rolled steel, drawn and then rolled over the coil.

Q Now, you have explained"ovalization," as a sort of flattening out of the coil?

A Shall we say, in order to help the Court, and explain it better, that by "ovalization " I mean a deformation of the center, the circumference of the coil; a deformation.

Q Well, that's what I am trying to get at. Now you are using the word "deformation."

In what respect does ovalization -- you have used the term "deformation" -- affect the quality of the cold rolled steel, the sheet itself?

A Now, if you have a deformation assuming a "V" shape -- "V" as in "Victor" -- and the coil--assuming it's three-and-a-half meters high--as you open, you unroll the coil, you will see the deformation on the sheet metal on the roll of sheets, the deformation as you go along, as you keep unrolling --

Q Does that mean, instead of being flat, it's undulating?

A Waving.

Q And that's the deformity you referred to?

A Yes; yes,indeed.

Q In other words, you are saying that it's not as usable in that condition as it would be if it were in the same condition as when it came off the roll?

A Well, regardless of who sells the steel, under what condition, the consignee, he himself will sell it to other, to a third party who will in turn cut on those steel cut sheet--or"folios,"if you wish -- that's the word he used -- sheets, smaller sheets than the regular size.

Q In other words, he can't -- whoever finally fabricates this, doesn't have as much of the good quality sheet as he would have if it were in its original condition.

A Of course, yes.

THE COURT: All right.

Any other questions?

MR. GOODENOUGH: No, your Honor.

THE COURT: Well, I think we can excuse the witness, then.

(Witness excused.)

THE COURT: Now, counsel, we left off last night on the question of what action, if any, should be taken with respect to the alleged real party in interest, and I think that all parties agree that the real party in interest is the Travelers Indemnity Company.

However, you have all prepared for trial on the basis of the plaintiff in whose name the suit was jblm

deposition --

THE COURT: No. We'll do one thing at a time. You will have an opportunity to do so.

Mr. Goodenough, you say that you have other material to submit.

MR. GOODENOUGH: Yes, your Honor. On May 28, 1974, Captain Davy Jones was deposed, and during the course of that deposition, certain items were identified by him.

THE COURT: Now, who is Davy Jones? I used to hear of Davy Jones's locker, but who is Davy Jones here?

MR. GOODENOUGH: Davy Jones identified himself in the deposition as an employee--

THE COURT: You are going to read part of it?

MR. GOODENOUGH: Seven Seas Shipping Corp.

THE COURT: Is this the deposition of the defendant, Seven Seas?

MR. GOODENOUGH: Yes, your Honor.

THE COURT: Taken through whom?

MR. GOODENOUGH: Taken through Davy Jones.

THE COURT: What is his position?

Suppose you read it. Go ahead.

Is there an extra copy of that?

MR. GOODENOUGH: On page 3 (quoting):

"Q State your full name, please.

"A Captain Davy Jones.

"Q And your residence address?

"A 620 Brandenburg Road, Ingleside, Illinois.

"Q Captain, by whom are you employed?

"A Seven Seas Shipping Corporation.

"Q Are you on their payroll?

"A Yes, sir.

"Q How long have you been employed by Seven Seas?

"A Seven years, going on seven years.

"Q In what capacity, sir?

"A Vice-president and president.

"Q What does Seven Seas Shipping Corporation do?

"A They are time charters, shipping operators, freight brokers, and general shipping agents.

"Q Does Seven Seas Shipping Corporation hold itself out to the public as a carrier?

"A We have at times, yes."

Then down on line 21, page 4:

"Q Did Seven Seas ever charter the SS Polarland?

"A Yes.

"Q On what occasions, Captain?

"A We time-chartered it, I believe, from about 1968 to about March, 1970.

"Q And after March, 1970. Seven Seas did not time-charter the SS Polarland?

"A No, sir, it did not.

"Q Did Seven Seas voyage-charter the SS Polarland?

"A I think we made a voyage freight charter in October of 1970.

"Q Captain, have you examined the record of Seven Seas concerning the SS Polarland?

"A I have glanced through the file, yes.

"Q And according to the records of Seven Seas, Seven Seas did not voyage-charter the SS Polarland in or about May, 1970?

"A No, sir.

"Q Captain, did Seven Seas enter into a charter agreement between themselves and Messrs. Ferrostahl A.G. of Essen, on or about March 5, 1970, for the SS Polarland?

"A We entered into a freight contract with them, sir.

"Q Do you have a copy of that freight contract?

"A Yes.

"Q May I see a copy of that contract, sir?

"(Witness hands document to Mr. Goodenough.)"

MR. GOODENOUGH: Mr. Sanfilippo, do you have a copy of that contract with you?

I'll continue reading, your Honor.

THE COURT: You may as well offer that in evidence now.

Maybe we'll take the mid-morning recess until you are organized.

(Recess.)

THE COURT: What page are you on?

MR. GOODENOUGH: Page 6, line 2, your Honor:

"Q Captain, did you sign this contract on behalf of Seven Seas?

"A Yes, sir.

"Q And that is your signature affixed to the bottom of the first page?

"A Yes, sir.

"Q Who signed the contract on behalf of Ferrostahl?

"A I don't recall.

May I see it?

"Q Yes (Handing to witness).

"A I think that's going to be Rjyn. I am not sure. That's R-j-y-n. He's the gentleman who signed that with me.

"MR. GOODENOUGH: Will you mark this, please."

MR. GOODENOUGH: This document was designated Plaintiff's Exhibit 1 in the Jones's deposition, and I offer it in evidence, your Honor.

(Plaintiff's Exhibit 13 for identification received in evidence.)

(Quoting:)

"Q Captain, this agreement between Ferrostahl and Seven Seas provides for a vessel to be nominated?

"A A vessel or vessels.

"Q A vessel, a single vessel, to be nominated.

"A That's a typographical error because it calls for about 2,000 tons from all over the United States, East Coast, Gulf Coast and the Great Lakes.

"Q Then the agreement should properly read, 'Owners of the steamer or motor vessels,' plural, to be nominated?

"A Yes.

"Q Was the SS Polarland nominated under the terms of this agreement?

"A Yes. I think she carried a couple of cargoes for us."

(Stop quote.)

THE COURT: Please bear in mind, as you are reading, you are kind of racing along.

MR. GOODENOUGH: I beg your pardon.

(Quoting:)

"Q Did she carry a cargo of steel from Cleveland to Antwerp on or about May 15, 1970, under this agreement?

"A Yes, I believe she did.

"Q Captain, I show you three bills of lading (Handing to witness). I ask you to look at these bills of lading.

"In your opinion, were the cargoes evidenced by these bills of lading carried aboard the SS Polarland pursuant to the terms of this Charter Party or this contract?

"A Yes. The bottom of it refers to the Charter Party.

"Q Between whom, sir?

"A Between Ferrostahl and Seven Seas Shipping Corporation.

"MR. GOODENOUGH: Would you mark these three bills of lading, please."

(Unquote.)

THE COURT: Those are the bills of lading in evidence now, as 4, 5 and 6.

MR. GOODENOUGH: Yes, your Honor, they are marked in evidence as Plaintiff's 4, 5 and 6.

(Quoting:)

"Q Captain, in accordance with the agreement between Ferrostahl and Seven Seas, would you identify, please, who are designated as the owners and who are designated as the charterers?

"MR. SANFILIPPO: Doesn't the document speak for itself?

"MR. GOODENOUGH: I thought just for the sake of clarity in the record.

"A It designates Ferrostahl as the owners and refers you to Clause 16 where it goes into a freight contract.

"Q Who is designated on the face of it as charterer?

"A I don't think anybody is, sir. It says, 'It is expected ready to load under this charter. See Clause 16.' So I refer to Clause 16 to see who the freight contract is for.

"Q Does it not say on the face, sir, 'It is this day mutually agreed between Messrs. Ferrostahl A. G. of Essen, disponent owners of the steamer or motor-vessel to be nominated of' blank 'tons gross/net Register and carrying about' blank 'tons of deadweight cargo' blank 'and expected ready to loan under this Charter. See Clause 16, Seven Seas Shipping Corp. of New York as charterers.'

"Doesn't that section designate Seven Seas as charterers under this contract?

"A It does say 'charterers' there, yes.

"Q Captain, again referring to the bills of lading designated Plaintiff's Exhibits 2, 3 and 4 for identification, I ask you to look at the bottom where it says 'World Shipping,Incorporated as agent by authority of the master.'

"Do you know who World Shipping represented?

"A Messrs. Ferrostahl, Incorporated.

"Q They did not represent Seven Seas?

"A They were Seven Seas' general agents, but under the contract, the agents for Seven Seas became Ferrostahl's agents for the purpose of the contract, the freight contract.

"In other words, our freight contract says he will use our agents where applicable. We have the right to appoint the agents for him, but the agents are his agents. They act on behalf of the vessel, sir. We merely have the choice of them.

"Q Is that again in Clause 16?

"A It's in the contract.

"Q In Clause 7 of the charter agreement, it says, 'In every case' -- and 'owners' is crossed out and 'the charterers' inserted -- 'The charterers shall appoint his own broker or agent both at the port of loading and port of discharge, owners paying customary agency fee.'

"A We merely appoint him. He becomes the agent of the owner and carries out the owner's wishes in the loading of the cargo. He is the owner's agent.

"Q But he is appointed by charterers?

"A He is appointed by us, certainly, and he is the owner's agent.

"Q The SS Polarland was provided for the shipment in question pursuant to the terms of this Charter Party between Ferrostahl and Seven Seas, is that right, sir?

"A I believe we nominated the Polarland in line with that contract, sir.

"Q Who prepared the three bills of lading, Captain?

"A I think the agents did, sir."

(Continuing on page 11 at line 16:)

MR. SANFILIPPO: Your Honor, for the sake of continuity, could we have the next two lines read into this? It's part of the same question.

THE COURT: Well, if you won't read it, he'll read it. You may as well read it.

(Mr. Goodenough reading page 11, at line 6:)

"Q World Shipping, Incorporated?

"A Normally, they would be the ones to do it.

"Q Do you know as a fact that they did it in this instance?

"A I would assume from the bills of lading, speaking for themselves, that they are the ones who signed them down there. They must have prepared them. I can't say they didn't have someone else do it for them, but it would have been the agent in Cleveland who did it.

"Q How did these shipments -- I refer to the shipments designated on the three bills of lading, Plaintiff's Exhibits 2, 3 and 4 -- come to be put upon the Polarland?

"A You ask me to go back about four years. I would say, from our usual method of doing things, we would have nominated a certain amount of cargo we had booked ready to load out of Cleveland, and Mr. errostahl, in due course, would offer us certain ships and we would pick out those ships which fitted our schedule best, and we advised which we would accept and a mutual agreement would be made on that and the cargo shipped.

"Q When you say 'we,' you refer to Seven Seas?

"A Yes.

"Q You don't refer to Nimpex?

"A No, sir.

"Q Seven Seas treated Nimpex as it would any commercial steel owner who is shipping cargo from Antwerp to Cleveland?

"A I wouldn't say we treated them like any commercial steel owner. I wouldn't say we bent over backwards for them, but we would treat them as a preferred customer.

"If I had a choice of picking up 10,000 tons of their cargo and 10,000 tons of anybody else's, I would take theirs first, but other than that, it would be the same type of arrangements and shipping problems."

Page 16, at line 11:

"Q Do you have any documents that might indicate who appointed the stevedores?

"A What were the dates of that?

"Q The shipment we are talking about?

"A Yes.

"MR. GOODENOUGH: May 12.

"THE WITNESS: I have a booking here. Cargo was to be loaded 4,000 metric tons per day for shippers' account.

"MR. CORWIN: Will you mark this as Defendant Vestland's Exhibit 12 --" (Unquote.)

MR. GOODENOUGH: Your Honor, I would now submit this booking note, which was so designated in the deposition, into evidence as Plaintiff's Exhibit 14.

MR. SANFILIPPO: No objection.

(Plaintiff's Exhibit 14 for identification received in evidence.)

(Quoting:)

"Q Captain, this document --" (Unquote.)

THE COURT: You offer an exhibit. Don't you want me to look at the exhibit?

MR. GOODENOUGH: I beg your pardon, your Honor.

(Pause.)

THE COURT: Proceed.

MR. GOODENOUGH: At page 16, line 25:

"Q Captain, this document we have marked as Defendant's Exhibit 12, will you tell us what that is again?

"A It's a booking note we have between Seven Seas Shipping Corporation and Nimpex International.

"Q Was the shipment we are talking about today booked in connection with this booking note we marked Exhibit 12?

"A Yes, sir.

"Q Whose signature or initials appear at the bottom of page 6 on behalf of Seven Seas?

"A That's mine.

"Q Do you know whose initials appear under 'Nimpex International' on page 6 of that document?

"A I can't make that out.

"Q Can you recall who signed that on behalf of Nimpex?

"A It should have been Resnick but --

"Q But you can't say for sure?

"A I can't say for sure. It's been quite some time."

THE COURT: Mr. Goodenough, should not all of this have been done as part of your homework for the case? Here we take lapses of five minutes and decide what questions and answers you are going to read from the deposition. It all should have been done in advance.

MR. GOODENOUGH: I apologize, your Honor.

On page 32, at line 9:

"Q Captain, I would ask you to look at the document referred to as Defendant Vestland's Exhibit 1$\overset{4}{2}$, booking note.

"Would you tell us, please, the freight rate charged by Seven Seas to Nimpex for the cargo to be shipped.

"A $11 per metric ton free out. That's a typographical error. It should be 'free in and out.'

"Q But it doesn't say 'free in and out'; it says 'free out'?

"A Yes.

"Q Captain, I ask you to look at the Charter Party agreement between Seven Seas and Ferrostahl which is marked as Plaintiff's Exhibit 1.

"If you would, tell me what the freight was that Seven Seas paid to Forrostahl for this particular shipment.

"A $10.25.

"Q That's per metric ton, sir?

"A No; it's per long ton.

"Q Per long ton?

"A Yes, sir.

"Q Captain, is there a difference then between the freight rate Seven Seas paid Ferrostahl than that which it was itself paid by Nimpex for shipping this cargo?

"A If there was, it would be only in small pennies. It would be almost identical.

"Q There would be a difference?

"A It would only be a few cents.

"Q How much is a long ton, Captain?

"A 2240.

"Q How much is a metric ton?

"A About 2232 pounds. It would be less than one percent difference.

"Q But the long ton is slightly more?

"A Yes.

"Q The difference is very slight?

"A Right, one percent.

"Q Then the difference between the freight rate Seven Seas paid to Ferrostahl and that which it received from Nimpex for 4,000 metric tons of cargo could run into thousands of dollars, could it not?

"A This calls for 6,000 tons. If that's all I have and couldn't offer him any more, then I probably paid him for 14,000 tons because my booking with Ferrostahl called for full shipment out of the Great Lakes.

"I don't have the records in front of me. I could have lost a lot of money but for 6,000 tons at 75 cents a ton less one percent, we have -- the most I could have made, if I didn't have any dead freight to Ferrostahl, would have been eleven or twelve thousand dollars."

Page 35, question at line 14:

"Q Captain, I thought you said earlier in your testimony that Seven Seas prepared the booking note in duplicate, sent it to Nimpex for signature and the return of one.

"A Right."

MR. GOODENOUGH: Your Honor, I offer this document, which was -- mark that, please.

(Plaintiff's Exhibit 15 marked for identification.)

MR. GOODENOUGH: Your Honor, I would offer this Exhibit 15 into evidence. It was received in the deposition of Mr. Gregg at Cleveland on June 10th, and it was designated in that deposition as Exhibit 16-C.

I would at this time offer it into evidence.

MR. SANFILIPPO: Your Honor, I would object to the introduction of this letter unless the portions of locate him, your Honor.

I might add --

THE COURT: You haven't even laid a foundation for the receipt of 15. I don't know what 15 is. You have just handed me a document, and other than your statement, there is nothing to show what this is.

MR. GOODENOUGH: I would refer to the Gregg deposition.

THE COURT: You are referring to it as if it's in evidence or you read from it. This is the first I hear of a Gregg deposition.

MR. GOODENOUGH: It's the deposition taken at Cleveland on the 10th of June.

THE COURT: Well, Mr. Goodenough, that may be so. I wasn't present when the deposition was taken.

MR. GOODENOUGH: I would like to read from it, your Honor.

THE COURT: Well, that's different. It seems to me that if you want it in evidence, you have to lay a foundation for it.

Go ahead.

MR. GOODENOUGH: On page 12, line 23:

"Q Referring to the letter which has been marked as Defendant's Exhibit 16-A --"

I should start earlier, your Honor.

THE COURT: Aren't you going to identify the person who is being questioned and what his relationship is to any of the parties who are involved in this controversy?

MR. GOODENOUGH: Yes, your Honor.

At page 3. By Mr. Corwin:

"Q Will you state your full name for the record, please?

"A Larry Douglas Gregg.

"Q And your home address?

"A 551 Bassett Road, Bay Village, Ohio.

"Q Where are you presently employed?

"A Great Lakes International Corporation.

"Q Just for the record, if you don't understand any questions that I ask you, just ask me to clarify them. Don't answer something unless you understand what I am asking.

"Did you appear here pursuant to a subpoena today?

"A Yes, I did.

"Q In what position are you employed?

"A I am the Vice-President of Administration.

"Q What are your responsibilities?

"A Financial reporting, billing, total administrative responsibilities of the company.

"Q Is there more than one Vice-President?

"A Yes, there is.

"Q Are you familiar with the shipment which is the subject of the suit, a shipment of coils of steel carried under bills of lading Nos. 1, 2 and 3, dated May 12, 1970, at New York for carriage on the Polarland?

"A I am familiar with the 299 coils. I don't know what bills of lading, and the rest of it.

"Q What was your company's relationship to those coils? How did you become involved with them?

"A We stevedored them. We loaded the ship.

"Q Did you store them prior to loading?

"A We received them. I do not know if we stored them.

"Q Do you have any documents with you that might show when you received the coils?

"A Yes, I do.

"Q May I see them, please?

"A The documents I have are the dock receipts for the coils, which is the yellow copy.

"Q You have now handed me a pile of documents. These cover the 299 coils? Or do these cover more than that?

"A I believe that they cover only the 299.

"Q All these that we have here?

"A Yes, I believe."

I would then proceed to page 12, your Honor, at line 19:

"(Nine pieces of correspondence were marked for the purpose of identification as Defendant's Exhibits 16-A through 16-I, respectively.)"

MR. GOODENOUGH: Your Honor, if I may go back to page 11, at line 7:

"Q Do you know who Martin Resnick is?

"A We contacted Martin Resnick. I don't know his title. I believe he was the man that we talked to about any problems. I think I sent letters to Mr. Resnick concerning billing problems; things like that.

"Q Do you know what company Mr. Resnick is with?

"A No, sir, I do not.

"Q Do you have copies of your correspondence with Mr. Resnick?

"A I was just looking for them. No, our correspondence was not with Mr. Resnick.

"Q With whom was your correspondence?

"A Mr. Friedman, Captain Jones, Mr. Reynolds, Mr.

Serra, and the chief officers of the Polarland.

"Q May I look at your correspondence.

"MR. CORWIN: I will ask the reporter to mark these letters and other correspondence Defendant's Exhibit 16-A through however many there are."

MR. GOODENOUGH: Then at line 19:

"(Nine pieces of correspondence were marked for purposes of identification as Defendant's Exhibits 16-A through 16-I, respectively.)"

MR. GOODENOUGH: Your Honor, I would now offer Exhibit 15 into evidence, as received from Seven Seas.

MR. SANFILIPPO: I object, your Honor. It's a letter as received by Mr. Gregg, supposedly from Seven Seas.

THE COURT: Pardon?

MR. SANFILIPPO: It is a letter as received by Mr. Gregg, who states that it was received from Seven Seas, not a letter sent by Seven Seas. That is not in the proof as yet, your Honor.

MR. WALKER: I submit that goes to the weight, your Honor.

THE COURT: Where is this referred to, this 15? Where is it referred to in the deposition?

MR. GOODENOUGH: It's marked 16-C, your Honor, in the upper left-hand corner, marked by the reporter.

THE COURT: I see it.

MR. GOODENOUGH: It's the package, the group of papers that he received from Mr. Friedman, Captain Jones, Mr. Reynolds and Mr. Serra, and the chief officers of the Polarland.

THE COURT: I'll receive it just as a letter that was received by this witness from Seven Seas or received by him.

You see, the trouble is you haven't developed in this questioning here whether they were documents kept in the regular and usual course of business, but I assume that that is so.

MR. GOODENOUGH: That is in the deposition, your Honor.

THE COURT: Where?

MR. GOODENOUGH: On page 33, your Honor, at line 3:

"Q And the correspondence that we have marked under Exhibits 16 and the letters following that, are all correspondence that was either received by your office or sent by your office in connection with the shipment that we are discussing today?

"A Yes, sir.

THE COURT: And then the next question? Why don't you read the next question? Oh, that goes to 14.

MR. GOODENOUGH: That goes to 14, yes.

THE COURT: Is 15 -- where is 16? The reason I said 15 -- 15 is identification, the number that the clerk of this court has marked here; that is what is confusing me at the moment, and it's blocked out over 16-C, which is the number used in the deposition.

I'll receive it as a letter received in the regular and usual course of business by the Great Lakes, but it doesn't prove the signature.

MR. GOODENOUGH: Do I understand, your Honor, the bill of lading, 7, designated Exhibit 7 for identification, is not received in evidence?

THE COURT: Not received in evidence.

MR. GOODENOUGH: Thank you, your Honor.

THE COURT: Not received at this point.

MR. KENNEDY: May we have a few moments, your Honor?

THE COURT: Yes.

(Pause.)

MR. GOODENOUGH: Would you mark that for identification, please.

xxx (Plaintiff's Exhibit 16 marked for identification.)

MR. WALKER: No objection.

MR. GOODENOUGH: Your Honor, this document or letter which is designated as Plaintiff's 16 for identification is part of the group of documents from which Plaintiff's 15 was identified. On page 12 of the Gregg deposition, at line 19, nine pieces of correspondence were marked for purposes of identification as Defendant's Exhibit 16-A through 16-I, respectively.

THE COURT: What's the problem?

MR. GOODENOUGH: I would like to offer this into evidence, your Honor.

MR. WALKER: No objection, your Honor.

MR. SANFILIPPO: No objection.

(Plaintiff's Exhibit 16 for identification received in evidence.) xx

MR. SANFILIPPO: Your Honor, no objection that it was received in the usual course of business by Great Lakes.

THE COURT: I understand.

MR. SANFILIPPO: Or sent out by Great Lakes, I believe; that letter.

MR. GOODENOUGH: Would you mark that for identification, please?

x (Plaintiff's Exhibit 17 marked for identification.)

MR. SANFILIPPO: I have no objection, on the same basis, your Honor.

MR. GOODENOUGH: Your Honor, Plaintiff's Exhibit designated 17 for identification, was part of the same group of correspondence designated as 16-A through I in the Gregg deposition and I offer it in evidence, your Honor.

(Plaintiff's Exhibit 17 for identification received in evidence.) xxx

MR. GOODENOUGH: Your Honor, I would now make my motion to add Travelers Indemnity Company as a party plaintiff.

THE COURT: Well, you were going to offer proof that Travelers Indemnity, through an official, consented. If you recall, you didn't have an officer here yesterday.

MR. GOODENOUGH: We weren't expecting the need to have an officer here yesterday, your Honor.

MR. KENNEDY: May I, your Honor? It was our understanding that it was your intention to, after hearing the motion--that is the motion being made orally--to take affidavits and briefs on the subject of whether, at this time, the Travelers Indemnity Company could be added as a party plaintiff.

Had we understood otherwise, we would have made except that he was able to produce a facsimile of a check which he believes was paid to somebody in Europe and it was not admitted in evidence, so that all we have here is counsel's statement that the Travelers Indemnity is the true party at interest; and I do not believe on that basis, that this Court can render a judgment against anyone and I am having a brief, as a matter of fact, written by one of our associates. Otherwise, I could read some law to you that I have in a memorandum in another case.

THE COURT: Well, I'll reserve decision on the motion and give you an opportunity to submit a brief.

In the meantime, are you ready to go forward, Mr. Walker?

MR. WALKER: Would you mind, your Honor, if Mr. Corwin carried on from here? We are ready to go forward, yes, through Mr. Corwin.

THE COURT: All right.

MR. CORWIN: I would like to read several portions from Captain Davy Jones's deposition that were not read by Mr. Goodenough.

Starting on page 14, line 10 or 11:

"Q How was Seven Seas designated throughout the agreement?

"A On the face of it, we are designated as the 'charterer' and in the rest of it, we are designated in the affreightment contract.

"Q Clause 16, if we go to the body of Clause 16, which is down below, the paragraph that begins, 'To be included, it is understood,' how is Seven Seas designated in there?

"A My answer to that then is on the face of it, we are referred to as the 'charterers' and in Clause 16, this document is referred to as a contract in the first paragraph and in paragraph No. 6, it's referred to as a mentioned agreement. In Clause 7, it's referred to as an affreightment contract and so on, many miscellaneous terms during the course of the contract.

"Q In Clause No. 16, the word 'charterer' appears several times. Does that refer to Seven Seas?

"A Yes, sir.

"Q Does the word 'charterer' as it appears throughout the pages which consist of Exhibit No 1 which ~~is~~ the one you have in your hand -- does the word 'charterer' as it is used throughout, refer to Seven Seas?

"A Yes, sir."

Just for the record, Exhibit No. 1 is the charter between Ferrostahl and Seven Seas, which was marked today, which is Exhibit 13 on this trial.

(Quoting:)

"Q And right above your signature it indicates that Clauses 16 through 24 are to be included in this 'Charter Party,' is that correct? Again referring to Exhibit No. 1" -- which again has been marked as Exhibit 13 today.

"A Right.

"Q And above Clause No. 16, on the third page of the document, does that indicate that the following are additional clauses to the 'Charter Party'?

"A Correct.

"Q Under this 'Charter Party,' or whatever you wish to call it, which we have marked Exhibit 1 (13, who was -- what party was responsible for appointing the stevedore?

"A We were or the shippers.

"Q And that would be either you, Seven Seas, or -- you say the word "shippers"?

"A Yes."

Going to page 17 at the bottom, line 24:

"Q Referring to the loading and discharge clause which appears at the top of the second page, it says, 'Cargo to be loaded,' and then the following portions are crossed out and it continues 'at the rate of 4,000 metric tons per day.'

"The portion that's crossed out seems to read 'stowed, lashed and chocked by shippers' stevedores at shippers' risk, responsibility and/or' -- and I can't read that word.

"Can you read that last word?

"MR. GOODENOUGH: I think that reads, 'and expense.'

"Q Under this contract or this booking note, the shipper was Nimpex, is that correct?

"A Right."

And that booking note is the one marked today as Exhibit 14.

Going to page 20, line 13:

"Q In the original copy of this booking note that you signed on behalf of Seven Seas, a photocopy of which was marked as Defendant Vestland's Exhibit 12, was that same portion crossed out on the top of the second page?

"A I don't have the original. I think that would be in the hands of Nimpex International. We would have sent them two copies and asked them to sign it and return one.

"Q The photocopy which you produced here, is that what they returned to you?

"A I don't know whether that's the one they returned or not. We may have photocopied it and put it in the file.

"Q Both signatures appear at the bottom of page 6.

"A That would be a photocopy of it, yes.

"Sometimes, we photocopy one before we send it out and put it in the file, so I am careful before I say that's it.

"Q Do you have any correspondence which predates the bill of lading dates which I believe are May 12, 1970, with World Shipping?

"A No. The only thing I have starts off with bills of lading.

"Q Do you have any correspondence relating to the shipment with World Shipping with you today?

"A No, I don't.

"Q Does World Shipping send you copies of the bills of lading?

"A Yes, we would get a set of the bills of lading on normal mailing after they have loaded and stowed and cleared the ship. They would mail them out to the various people that required them in the normal course.

"Q Did you receive copies of the bills of lading from World Shipping, similar to or identical to the ones we marked today as Exhibits 2, 3 and 4?

"A I would say they speak for themselves, but we must have. If we didn't, we would be hollering for them.

"Q World Shipping, Inc. acts as your general agent? Is that what you previously testified to?

"A Yes. Well, you say 'general.' He acts as one of our agents. He's the agent in Cleveland only. He's the agent in Cleveland, Toledo, Erie, that section there."

Now, going to page 26, starting at line 6:

"Q Is this booking note incorporated into the Charter Party or into the document we marked as Exhibit 1? The booking note indicates at its end 'This freight contract shall be incorporated in all bills of lading.'"

Mr. Sanfilippo made a comment.

I stated: "I am asking if it was incorporated in the Charter Party or the bill of lading that was referred to.

"A I would say that the asterisks at the bottom between Ferrostahl and so forth refers to our bookings.

"Q Is there any reference in the charter to the booking note that you can recall?

"A Line 18 has a cross-reference to Clause 16, and then goes on 'as ordered on signing bills of lading.'

"Q Referring to the third page, Clause 16 of the Charter Party, the seventh paragraph which begins with the words 'to be included, it is understood in affreightment contract,' might that be referring to this Exhibit 12 which you called the booking note?

"A Yes, sir.

"Q Is that what is referred to there?

"A No. They mean this, what you are referring to as the Charter Party.

"Q The eleventh clause of what you call the booking note says,'This freight contract shall be incorporated.' They are calling this a freight contract, is that right?

"A They are calling the booking note a freight contract, yes. It's the same thing, booking note-freight contract.

"Q On this document which was marked Plaintiff's Exhibit ~~1~~ 13, on the second page of the additional clauses, you see the words 'Not free of risk' written in the right-hand margin.

"MR. SANFILIPPO: That's my notation in there.

"Q Those words were not included in the original contract?

"A No, sir.

"Q Is it unusual for a charterer to assign Charter

Parties for vessels to be nominated or named?

"A Well, you are calling it a'Charter Party.' I call it a 'freight agreement.'

"Q I refer in general -- you are in the brokerage business?

"A Yes.

"Q I just wonder, in general, is it unusual for Charter Parties to be signed?

"A Is it unusual?

"Q Yes, 'unusual.'

"A No, it is not. The vessel to be nominated -- the vessel would be namely TBN, to be nominated.

"Q Is that usual?

"A Yes.

"Q Do you have any correspondence with World Shipping in New York, World Shipping's office in New York?

"A No, I don't think they had one in New York. If they do, it's news to me."

I would like to read a portion from the document that's been marked as Exhibit 13 today, the Charter Party between Ferrostahl and Seven Seas.

MR. SANFILIPPO: Your Honor, I don't believe that is a proper reading of something in the middle of

AFTERNOON SESSION

2:00 p.m.

(Trial resumed.)

MR. CORWIN: I would like to continue reading from the deposition of Mr. Gregg, which Mr. Goodenough began.

On page 8, line 16:

"Q Would he do that on any other document besides the dock receipt?

"A The notations from the dock receipt would be carried over to our out turn report.

"Q Out turn report?

"A Yes.

"Q Do you have a copy of the out turn report?"

And that was marked as Exhibit 14, a three-page document, headed "Great Lakes International Corp. Outward Cargo List" was marked for the purpose of identification as Defendant's Exhibit 14.

(Defendant Polarland Exhibit D marked for identification.)

MR. SANFILIPPO: No objection.

MR. GOODENOUGH: No objection.

MR. CORWIN: I would like to offer this in evidence.

(Defendant Polarland Exhibit D for identification received in evidence.)

xxx

MR. CORWIN: Continuing at line 6:

"Q Referring to the document we have marked as Defendant's Exhibit 14" -- which we have just marked as D -- "which you indicated was an out turn report, the notations in the far right-hand column are supposed to be the same notations that are on the dock receipts carried over; is that correct?

"A Yes, sir."

Then dropping down to line 25:

"Q Who contacted you first concerning shipping? When did you first have any relationship with it?

"A With this shipment?

"Q Yes.

"A I really don't know.

"Q Do you have any correspondence regarding your receipt or loading of this shipment?

"A We received telegrams from Sharon Steel indicating what we could expect, Telexes and telegrams indicating what would be coming in.

"Q I believe the earliest date appears to be April 17. Do you know if you received any notice earlier than this, concerning your receipt of this shipment?

"A I must assume there was something. I don't know --

"Q Would you look through your file and see if there is any correspondence that comes before April 17th?

"A I have nothing."

Then the reporter at the deposition marked a seven-page document purporting to be telegrams, for identification as Defendant's Exhibit 15; and I would ask that this be marked.

(Defendant Polarland Exhibit E marked for identification.)

MR. CORWIN: I would like to offer that.

(Defendant Polarland Exhibit E for identification received in evidence.)

(Quoting:)

"Q Looking to the top telegram that we have marked as Defendant's Exhibit 15"--which we have just marked as Defendant E --"it indicates a carbon copy to Martin Resnick; is that correct?

"A Yes."

Going to page 12, line 23 -- 24:

"Q Referring to the letter which has been marked as Defendant's Exhibit 16-A, that is from Mr. Friedman?

"A Yes."

MR. CORWIN: I believe that exhibit has been marked as Plaintiff's Exhibit 17.

(Quoting:)

"Q He signed that letter on behalf of Seven Seas; is that correct?

"A Yes, sir.

"Q What does that letter indicate as to the arrangements for payments for stevedoring of the shipment we are talking about, the 299 coils?

"A It indicates that the cargo on the ship should be billed to either Phillip Brothers or Nimpex, depending upon the cargo; and the terms were F.I.O.

"Q The shipment that we are discussing was shipped by Nimpex. Who were you to bill for the loading of those coils?

"A It states here 'Nimpex cargo can be invoiced either to Seven Seas or Nimpex.

"Q Do you have a copy of the invoice with you?

"A Yes, I do."

Then page 14, line 7, the reporter marked Great Lakes International Corp. Invoice No. 7095, dated June 9, 1970, as Defendant's Exhibit 17; and I ask that that be marked.

xx (Polarland Exhibit F marked for identification.)

MR. CORWIN: I ask that it be received in evidence.

MR. GOODENOUGH: No objection.

MR. SANFILIPPO: No objection.

(Defendant Polarland Exhibit F for identification received in evidence.)

(Quoting:)

"Q Referring to Defendant's Exhibit 17" -- which was just marked as F -- "what services does that invoice cover?

"A This was for the actual loading into the vessel of the 299 coils.

"Q And that was billed to Seven Seas?

"A Yes, sir.

"Q Was that invoice sent on the day that it is dated, June 9, 1970?

"A Probably within a day or two of that.

"Q And it would have been sent to Seven Seas at this address?

"A It would have been sent to that address, yes."

Going to page 15, line 2:

"Q Now I notice on Defendant's Exhibit 17, the invoice, there is a penciled notation on it. What does that read?

"A 'Paid by Nimpex 9/25/70.'

"Q Do you know in whose handwriting that is?

"A No, I do not know whose handwriting it is.

"Q Do you have any evidence with you, for instance a photocopy of a check or whatever, showing payment?

"A No, sir.

"Q Would that be the only evidence of payment?

"A Probably, yes.

"Q When you say 'probably,' would there be something else that --

"A There may be an account card indicating debits and credits, invoices and payments, which I neglected to bring with me.

"Q Would that indicate the party that paid the bill?

"A No. It would just indicate that it was paid.

"Q Did you invoice Seven Seas for any other services in connection with this shipment?"

And the reporter marked Invoice No. 7436 as Exhibit 18; and I will offer that.

MR. GOODENOUGH: No objection.

MR. SANFILIPPO: No objection.

xxx (Defendant Polarland Exhibit G for identification received in evidence.)

MR. CORWIN: The reporter marked Invoice No. 7085, dated June 9, 1970 as Exhibit 20; and I will offer that.

(Defendant Polarland Exhibit H for identification received in evidence.)

MR. CORWIN: The reporter marked Invoice No. 7087, dated June 9, 1970 as Exhibit 21; and I will offer that in evidence.

(Defendant Polarland Exhibit I for identification received in evidence.)

MR. CORWIN: Referring to question on line 23 at page 16:

"Q Referring to Defendant's Exhibit 18, which is Invoice No. 7436, could you tell me what services you were billing Seven Seas for?

"A This is the wharfage charge, and at this time, we were billing this and collecting it for the Port. It's a Port charge. We don't receive the revenue for this. We pay this directly to the Port Authority. And it is at 50 cents per long ton of cargo."

Going down to line 24 on page 17:

"Q Referring to Invoice 7085, would you tell me for what services that is?

"A Extra services that were performed on the vessel.

Anything that we would do other than the loading. Opening and closing of hatches. Overtime. Securing. Any service other than stevedoring.

"Q Would that include lashing or --

"A Yes.

"Q Chocking?

"A Yes.

"Q In other words, anything that was done in connection with the loading, other than the actual moving it on board; is that correct?

"A Yes, that's correct.

"Q Referring to Exhibit 21, which is Invoice No. 7087 --

"A That's a charge for lights. It's another Port Authority charge. It's for the hours spent and the lights used.

"Q Okay. Now, referring to those same four invoices that we have marked as Exhibits 18 through 21, can you tell me if there is any indication on any of these invoices as to who paid it or when it was paid? I will put them in order for you.

"Looking first at Exhibit 18.

"A Exhibit 18, there is a note that it was paid by Nimpex on 9-26-70."

I believe Exhibit 18 has been marked today as G.

On page 19, line 15:

"Q Fine.

"A And Exhibits 20 and 21, there also appears to have been credit memos issued on them."

And they have been marked today as Exhibits H and I, respectively.

(Quoting:)

"Q When you say 'a credit memo,' that means that this total that you were invoicing someone for, you took that out of some other charge that was made to them?

"A Well, the credit memo means that this invoice as it was sent out was not right, and that we either did not charge this or that it was reissued. The account was brought into proper balance by removing this from the account and then reissuing or not issuing it, depending on what the situation was.

"Q Well, referring to Exhibit 20, is there any way that we can tell who actually paid for the charges of the services that are on there?"

Exhibit 20 is H today.

(Quoting:)

"A No, sir; not from there, no.

jblm "Gregg"

"Q What would be the record? Where would you tell who paid for those services?

"A Two records -- the account cards and the credit file that we keep.

"Q Now, that credit file, is that for separate accounts or is that a general file?

"A It's a general file.

"Q The account cards are for separate --

"A The account cards are by name.

"Q All these invoices were sent to Seven Seas on the dates indicated on them; is that correct? And when I say 'these invoices,' 17 through 21.

"A The dates indicated, or somewhere near that time, yes, sir. It could be a day or two.

"Q Do you have any other invoices with you that reflect any charges made for services rendered by your company in connection with this shipment, your handling of it or storage of it?

"A No, sir; the 299 coils, no.

"Q There are no other invoiced services?

"A To my knowledge, no.

"Q And there is nothing in your file today?

"A Not that I have with me.

"Q Were all these invoices directed to Seven Seas as a result of the letter of May 28th that we have marked as Exhibit 16-A?

"A I would assume. I haven't read all --

"Q Do you want to look at the other correspondence?

"A Okay. Can I have that question repeated, please?"

THE COURT: What is the purpose, Mr. Corwin, of all this evidence which shows that the billing was to Seven Seas -- that is, the billing by Great Lakes.

MR. CORWIN: If you recall, I believe Mr. Jones in his deposition, stated on behalf of Great Lakes, that he had no correspondence with the stevedore; that if he spoke with them at all, it was only infrequently. In fact, he, at his deposition, stated he wasn't even sure who the stevedore was.

THE COURT: What is its legal significance?

MR. CORWIN: That we believe the proof has shown now that the damage, if there is any, was due to improper storage and we believe that the party who selected the stevedore --

THE COURT: You claim is Seven Seas?

MR. CORWIN: Is Seven Seas.

I believe we left off at page 21, line 10, where the reporter repeated the question and Mr. Gregg answers that question:

"A Yes, sir."

Page 22, line 1:

"Q And you are saying that --

"A There is another invoice, 7382. I don't see it in here.

"Q Who directed you to so invoice it?

"A Mr. John Reynolds.

"Q And with which company is he?

"A It says Seven Seas -- the stationery. I don't know any more about it.

That appears to be the only one."

Going to page 23, line 3:

"Q In other words, is there some indication as to how these invoices or the charges under them were disposed of, whether they were credited to somebody or just eliminated, whatever, in the correspondence that you have?

"A Yes, there is.

"Q Well, specifically, 7085.

"A 7085 was broken down to two parties -- Phillip Brothers and Nimpex. Some of these charges may not have been valid. I mean if you took the total of these two invoices between Phillip Brothers and Nimpex, you might not come back to $4,620.

"Q I see.

"A The reason they were broken down was the charges for the extra services and overtime were applied to the respective cargoes. We worked overtime loading the hot rolled coils and the cold rolled coils. And that's just the way they were broken down, and that's on this letter.

"Q When you say 'this letter,' that's Defendant's Exhibit 16-D, correct?

"A Yes, sir."

16-D has been marked today as Plaintiff's No. 16.

(Quoting:)

"Q Now there is reference on here to Invoice 7558. Do you have that invoice with you?

"A No, sir, I do not.

"Q Could you tell us for the record, if you can, what services were covered by Invoice No. 7558 and to whom Invoice 7558 was directed?

"A Invoice 7558 was directed, as this letter indicates, to Nimpex, to Mr. Friedman. The services, I would simply be guessing.

"Q Well, they would be services that are included on Invoice 7085; is that correct?

"A Yes, sir. Maybe I can --

We had billed 'Stand by for rain' to Nimpex, 68 percent; 32 percent to Phillip Brothers, as indicated there.

It looks like some more 'Stand by for rain' there. We had some lashing and some dead time that was broken down between Nimpex and Phillip Brothers there."

THE COURT: You have a tendency to drop your voice very much. I am having difficulty hearing you.

MR. CORWIN: Sorry. We are at line 20, page 24:

"MR. CORWIN: Would you mark these as Exhibits 22-A, B and C, please.

"Maybe I could have the rest of these sheets.

"Q What would you call these? Detention, Overtime, Extra Service and Work Record sheets?

"A Yes, sir."

The reporter marked the sheets Great Lakes International Corporation Detention, Overtime, Extra Service and Work Record Sheets, as Defendant's Exhibits 22-A through 22-G, and I would offer those.

(Defendant Polarland Exhibit J for identification received in evidence.) xxx

MR. CORWIN: On page 25, line 10:

"Q Referring to Defendant's Exhibit 22-A, I notice there are charges on there, or apparent charges, for lashing; is that correct?

"A Yes.

"Q Was there any lashing done, other than is reflected on that exhibit? If you want to look at the others, you may."

Going down to line 21 --

"A Yes, there was.

"Q Which exhibit is that on?

"A 22-G.

"Q Is there any way of knowing which shipment -- and when I say 'which shipment,' there apparently was a portion that was Nimpex cargo and a portion that was Phillip Brothers'.

"Is there any way of knowing which shipment was being lashed on 22-G?

"A No, there is no way for me to know.

"Q Do you know who paid for the lashing that is reflected on 22-G?

"A No, sir, I do not."

22-G is the last sheet in Polarland's Exhibit J.

(Quoting:)

"Q The lashing that is reflected on 22-A, if I understand correctly, 68 percent was paid by Nimpex; is that correct?

"A Yes, sir."

And again, 22-A is the first sheet of Polarland's Exhibit J.

Going to page 28, line 2:

"Q What days were coils loaded?

"A The entire time the ship worked, the coils were loaded. That's all there were on the ship.

"Q How many days were there now?

"A They worked the 12th, 13th, 14th, 18th and 19th.

"Q Where were the 299 Nimpex coils stored or kept before loading, but after receipt by the terminal?

"A I don't know.

"Q Do you have any record which would reflect where they were kept?

"A We may have them noted on the dock receipts.

They were put on Dock 30, which is all that I know.

"Q Dock 30?

"A Yes."

Going to the bottom of page 29, line 25:

"Q Did you have any conversations with Mr. Davy Jones concerning this shipment?

"A I am sure I did.

"Q Do you know Mr. Davy Jones?

"A I have talked to him; yes, sir.

"Q With whom is he, what company?

"A We talked to Mr. Jones at Seven Seas Shipping.

"Q Do you know what you discussed with him when you talked with him?

"A It was a breakdown of the charges, evidently.

"Q And which charges would those have been?

"A Stevedoring extra services I assume from the letter.

"Q He refers here to Invoices 36629 and 36788?

"A That's right.

"Q Do you have copies of those invoices with you?

"A Yes.

"Q Referring to your letter of July 13 that we marked as Defendant's Exhibit 16-B, which refers to those two invoices, I understand there was a mistake with regard to invoicing Seven Seas for these services. These were not Nimpex coils?

"A That's correct.

"Q Did you discuss this shipment with Mr. Resnick, Martin Resnick, at any time?

"A Not that I can recollect."

MR. CORWIN: I would like to offer in evidence the letter that is referred to as Defendant's Exhibit 16-B.

(Defendant Polarland Exhibit K for identification received in evidence.)

xxx

MR. CORWIN: Going down to the bottom of the page and continuing -- page 30, at the bottom:

"Q Do you have any documents with you other than the ones we have marked which might reflect the condition of the coils, either before or during loading?

"A No, sir.

"Q Did you perform the stevedoring services pursuant to any written contract?

"A None that I know. I must assume that there was something, but it would probably have been made by the then President of the company, Gil Navy."

Going to line 16, the same page:

"Q Do you know who requested you in this case to perform stevedoring services?

"A No, sir, I do not.

"Q Referring to Defendant's Exhibit 16-E, can you tell me, which of the invoices we have marked today, that letter refers to?

"A The utilities charge. This invoice.

"Q That's Invoice 7087?

"A Yes, sir. That's what he is talking about.

"Q Okay, fine."

(Defendant Polarland Exhibit L for identification received in evidence.)

MR. CORWIN: We left off with, "Okay, fine," on line 25, page 31. I would like to continue. After that was an answer at the top of page 32:

"A And I think you will find this invoice was subsequently not collected because these charges were something that all the others were not paying."

Skipping down to line 10 on the same page:

"Q Do you have any correspondence, Telexes, telegrams or notes of telephone conversations that predate -- in other words, before -- the days of loading, which would have been, I guess, about May 12th, 13th and from then on?

"A Not with me, but there may well be something in my files."

Down to line 20, the same page:

"Q And are the invoices records that you keep regularly in the course of your business?

"A Yes, sir.

"Q And are the Detention, Overtime, Extra Service and Work Records that we have marked as Exhibits 22, records that you keep in the regular course of your business?

"A Yes, they are."

Those records we have marked as Exhibit J today.

Question on page 33, line 9:

"Q And the document that we have marked as Defendant's Exhibit 14, is that a record that is kept in the regular course of your corporation's business?

"A Yes, sir."

Exhibit 14 has been marked today as Exhibit D, I believe.

Page 34, line 16:

"Q Mr. Gregg, I would ask you if you could go back to your office at some time today or tomorrow, look in your file and see if you can locate the contract, if in fact one does exist, for the services performed by your corporation in connection with the loading of the 299 Nimpex coils; and if you cannot find it, to advise Mr. Carle, and we would request that you provide him with a copy of it so that he might photostat it and forward it to us. And of course, we would provide copies to counsel for the other parties."

The question continues on page 35:

"Q Well, what I am doing is, I will request that you try to locate it and advise Mr. Carle whether you can on Dock 30. Under a shed?

"A No, sir. I don't believe I have stated that. Dock 30 is a shedded dock. I don't know whether this load was somewhere else.

"Q Well, let's correct the record, then.

Mr. Corwin asked you where the material was kept prior to loading upon the vessel?

"A Yes, sir.

"Q And you said it was kept on Dock 30?

"A That's correct.

"Q And you also said that Dock 30 contained a shed?

"A Yes, sir.

"Q Was the material under the shed or outside?

"A I don't know.

"Q I direct your attention to Mr. Peachman's report of survey which has been marked as Exhibit 24. In the third paragraph, it states that the material was on the outside storage area with the cold rolled steel protected by means of tarpaulins.

"Now, that outside area, that would not be under the shed, would it?

"A No, sir.

"Q In your records, have you been able to find any payment that was made to your firm by Seven Seas?

"A No, sir, I have not. but it hasn't been properly investigated. There wasn't any time."

Page 44, line 8:

"Q How long have you been dealing with this Nimpex or Seven Seas account? Do you know?

"A No, sir. My memory only goes back as far as this. If we dealt with them before, I don't remember.

"Q This would be May of 1970 or thereabouts?

"A Yes, shortly before that."

Page 47, line 7:

"Q To whom do you send copies of the dock receipt?

"A To the freight forwarder, to the --

"Q Who is the freight forwarder?

"A Whoever brokered that freight. I don't know. To the steamship line.

"Q Who would that be?

"A This I couldn't tell you either. I am sorry. They would go to the shipper, which in this case is shown as Nimpex International. That's who the dock receipt would be made out to, and the forwarding agent; and I do not know who the freight forwarder was on this cargo.

"Q Is there any reference at all as to who the shipping company here is?

"A The shipper is shown here as Nimpex International.

The shipping company, there is no notation."

Going to page 50, line 10:

"Q Mr. Gregg, is Great Lakes International the only terminal operator in Cleveland?

"A No, sir. There are two terminal operators.

"Q In addition to Great Lakes?

"A No.

"Q Two throughout the port?

"A Two throughout the port."

Going to page 54, line 23:

"Q Who made these notations on the dock receipt that we have marked under No. 13?"

(Unquoted:)

MR. SANFILIPPO: I would like to object to any reference to the dock receipts, as they are not in evidence. Mr. Corwin has eliminated those as exhibits, but he wants to take the advantage of the testimony that was given on them. I think all that testimony referring to 13 should be excluded unless he puts in the dock receipts first.

MR. KENNEDY: Your Honor, if it would help, the plaintiff is prepared to offer the dock receipts in evidence. We had planned to do so after Mr. Corwin was finished reading from the deposition. If I may --

THE COURT: Is there any objection?

MR. KENNEDY: I'll offer them now as the next exhibit.

MR. CORWIN: I think there is no objection.

MR. SANFILIPPO: I have no objection.

THE COURT: Without objection, they will be received.

(Plaintiff's Exhibit 18 for identification received in evidence.) xxx

MR. KENNEDY: They were referred to at page 6 of the deposition of Mr. Gregg. They were marked at that time as Exhibits 13-A through J.

THE COURT: Are there any specific dock receipts here that my attention should be called to?

MR. CORWIN: Your Honor, I believe at the deposition, and this is a portion of the deposition which I omitted to read, because the dock receipts were not offered --

THE COURT: Go ahead, then.

MR. CORWIN: Page 4, line 19:

"Q Do you have any documents with you that might show when you received the coils?

"A Yes, I do.

"Q May I see them, please?

"A The documents that I have are the dock receipts for the coils, which is the yellow copy.

"Q You have now handed me a pile of documents. These cover the 299 coils or do these cover more than that or less than that?

"A I believe they cover only the 299.

"Q All these that we have here?

"A Yes, I believe."

For the benefit of the Court, I believe the first sheet is the yellow sheet on each dock receipt.

THE COURT: Well, now, what purpose are these offered for now? That's what I am asking. The plaintiff offered them.

MR. KENNEDY: Mr. Gregg testified that his out turn report, which was offered in evidence by the Defendant Vestland, contained the substance of the exceptions that were taken from the dock receipt. Since the out turn report or the"outward cargo," as it should have been called, was marked in evidence or received in evidence, plaintiffs wish to offer the dock receipts to snow what specific exceptions were taken to the specific cargoes.

THE COURT: That's what I asked you before. Are there any particular dock receipts that I should look at? Which are the ones that have what you term "exceptions.?

MR. KENNEDY: We have prepared a list indicating which dock receipts contain exceptions and which are not claused and, of course, the dock receipts speak for themselves as to the notations that were taken when the shipments were received.

I suppose this is argument, but the exceptions basically refer to a slight rust condition and --

THE COURT: I looked through a number.

MR. KENNEDY: Next to each dock receipt is an exception report.

THE COURT: I see. It's on the attachment, is that it?

MR. KENNEDY: I believe it's the third document most of the times.

THE COURT: Are you stating that the bills of lading contain the same exceptions?

MR. KENNEDY: The testimony of Mr. Gregg was that the exceptions which he put on his outward cargo list, were taken from the dock receipts. The bills of lading do not contain precisely the same exceptions. There is some addition made in the outward cargo list.

MR. CORWIN: Continuing on page 54, line 23:

"Q Who made these notations on the dock receipt that we have marked under No. 13?

"A It was done either by our Export Manager or by checker.

"Q Do you know what their procedure is with regard to making notations on dock receipts as to the condition of cargo?

"A As the cargo is taken off of the conveyance, it is looked at. And those notations would be placed as a note some place on one of the documents, here, here, or here"-- I think he referred to all three pages. I think you will find that all of these -- this is all one dock receipt.

(Quoting:)

"Q The documents that we have marked under 13, you consider them as one dock receipt?

"A Whoever has the dock receipt will have one dock receipt, more than likely, for 299 coils.

"Q I see. So although you have separate documents, that might have been done just for convenience when you are looking at them as they are coming off?

"A As we were receiving them, yes, sir.

"Q But really they would come under one dock receipt?

"A Yes, sir. As I understand it, that's how it was."

Your Honor, we served a subpoena upon Nimpex International asking for production of the dock receipt, and I've been informed by the clerk downstairs that there has been no compliance with the subpoena.

Mr. Gregg, in his deposition, testified that a copy of the dock receipt would have been sent to Nimpex, and I would call for the production of this one dock receipt he refers to on page 55.

MR. GOODENOUGH: Your Honor, we were only advised of the subpoena yesterday, and as is very apparent, we have no control over Nimpex.

Furthermore, there is no testimony that Nimpex had the dock receipt.

MR. CORWIN: Mr. Gregg clearly states in his deposition that a copy was sent to Nimpex.

MR. KENNEDY: Your Honor, the dock receipts that were offered by Mr. Gregg at the deposition are copies of the originals, and they have been offered in evidence.

Now, I don't see what the production of other copies of the dock receipts will do for this defendant's case.

MR. CORWIN: It appears from the deposition, that the procedure was to fill out these multitude of dock receipts for each rail car. There is testimony I will read on that. They did this merely for their own office-keeping purposes.

After all the rail cars were emptied--according to Mr. Gregg, there was one dock receipt issued for the entire lot of 299 coils. I would assume that that one dock receipt includes all of the notations contained on the 299, and would apply to the entire shipment of 299 coils.

THE COURT: He testified to that, didn't he?

MR. CORWIN: Mr. Gregg did, yes.

I am asking for the production of one dock receipt.

THE COURT: How would that better your position, if you got the dock receipt?

MR. CORWIN: There are certain dock receipts that are part of this group that we produced today, which I think do not contain exceptions, or they are not all identical exceptions; there seem to be some where they mention just "rust," some "chafing," and some have the word "clause" on the front.

Mr. Gregg, in his deposition, indicated that he did not know what the word "clause" meant. I would assume that the word "clause" meant the exceptions on the first dock receipt were meant to be carried through on each one that had the word "clause" written on it.

For this reason, I think since Mr. Gregg indicated that one dock receipt was ultimately issued and a copy of the one dock receipt was sent to Nimpex. We should be able to see the dock receipt that was issued to Nimpex, which apparently is not a copy of this, well, 30 or 40 dock receipts. They were given one dock receipt.

MR. KENNEDY: When Mr. Gregg was questioned about when he received the cargo, he was asked at page 4 of his deposition, line 19:

"Q Do you have any documents with you that might show when you received the coils?"

His answer was, "Yes, I do,"and Mr. Corwin said, "May I see them, please."

The answer was:

"A The documents that I have are the dock receipts for the coils, which is the yellow copy."

Mr. Corwin said, "You have now handed me a pile of documents. These cover the 299 coils? Or do these cover more than that or less than that.

The answer was, "I believe they cover only the 299 coils. And Mr. Corwin, in referring to the documents, at page 5, said at line 20: "I would say it looks like there are about 20 dock receipts; and, thereafter, at page 6, the recorder noted "The first page of a series of documents --

THE COURT: You are reading what was read before.

MR. KENNEDY: I am re-emphasizing that the dock receipts are offered in evidence.

THE COURT: What you have subpoenaed is not here. The process of the Court is available to compel its production.

MR. CORWIN: I don't believe they have indicated that they do not have it on the record.

MR. GOODENOUGH: For the record, your Honor, we do not have the dock receipt.

THE COURT: There is so much talk that doesn't add anything to the case.

MR. CORWIN: I would just like it on the record.

THE COURT: All right. It's on the record, if you want it.

Make a motion, if you think they have it, to punish them for contempt.

MR. CORWIN: Going back for more explanation as to what the individual dock receipts consist of.

On page 7, line 21:

"Q Now looking at these dock receipts, could you tell us what are the two sheets that are attached, or appear to be attached, to each yellow sheet?

"A The small white one is a rail shipping record, what Sharon Steel indicates they put into the rail car. And the large cardboard is our receiving record, what we say we took out of the rail car."

For the record, the cardboard is the last of the three documents.

(Quoting:)

"Q Does the individual that prepares the dock receipt make exceptions on the dock receipt or note the condition of the coils when they are received?

"A I don't know. I haven't looked those over.

"Q Looking at 13-A, the dock receipt yellow sheet.

"A Yes, he does indicate some damage.

"Q Is that his job, this individual, to note exceptions on dock receipts as to the condition of cargo if they are out of order and so forth?

"A It would be his job to make any notation on cargo received.

"Q Would he do that on any other document besides the dock receipt?"

I believe the rest has been read.

On page 9, line 13:

"Q On Exhibit 13-A" -- which we have marked as the group of dock receipts--"there is a white sheet attached to the top of it on which the reporter has noted the exhibit number. What is that?

"A That's our terminal transfer charge billing for receiving this cargo.

"Q Is that a charge that covers the carriage between the place where you receive it to the shipside?

"A No. This charge covers unloading the inland conveyance. And this was rail cars, I believe. And this was the charge we assessed for taking the coils out of the rail cars and putting them some place in our facility in a place of rest."

THE COURT: Now, there is a reference to Sharon Steel. Is Sharon Steel a Nimpex company or is Sharon Steel a company that sold to Nimpex?

MR. GOODENOUGH: As far as we know, it's a company that sold the steel to Nimpex.

THE COURT: Is there anything else to be read?

MR. CORWIN: No, your Honor, but I would like to offer this one letter in evidence which was marked at the deposition as 16-C and was referred to several times.

MR. KENNEDY: It's already in evidence.

MR. CORWIN: I'm sorry.

THE COURT: What else do we have now?

MR. CORWIN: I would like to offer in evidence an affidavit of Ernst W-e-g-e-r, sworn to on February 14, 1974, in Essen, Germany.

MR. GOODENOUGH: Before he leaves the deposition, could we add two small phrases?

THE COURT: Yes.

MR. GOODENOUGH: On page 44, line 20:

"Q So far as you personally are concerned in your dealings with Nimpex or Seven Seas, are you dealing with one and the same person or are you dealing with two separate entities?

"A I am dealing with two companies.

"Q So that when Mr. Friedman calls you, whom do you allocate him to?

"A I believe, Seven Seas.

"Q And when Mr. Reynolds calls you, who would he represent?

"A I have only spoken to Captain Jones. To the best of my memory, I have only spoken to Captain Jones and to Mr. Friedman."

At page 56, at line 6:

"Q The notations made on those dock receipts, are those notations made at the time the cargo is viewed by the party making the notations?

"A Yes, sir. As the coils were brought off of the rail car, the checker would naturally make his notations at that time."

(End of quote.)

MR. GOODENOUGH: We have no objection.

MR. SANFILIPPO: Your Honor, without even reading the contents of this affidavit I most certainly would oppose it. I've had no opportunity to cross-examine this man and, therefore, his affidavit on a unilateral basis such as this, should never be permitted into this record.

THE COURT: What's the theory on which you offer an affidavit into evidence? I haven't looked at it either, but even before Mr. Sanfilippo made his objection, I was wondering: What is the theory on which you offer an affidavit and the witness can't be cross-examined?

MR. CORWIN: That affidavit was, first of all, not obtained by us. That affidavit was submitted by Mr. Zambito's firm on behalf of Ferrostahl.

THE COURT: You have a habit of dropping your voice and looking down, and I have a great deal of difficulty in hearing you. If you are going to be a courtroom lawyer, you have to be prepared to speak up, to address the Court or the jury.

MR. CORWIN: The affidavit was submitted in

THE COURT: Can you find any reference?

MR. SANFILIPPO: I did not ask a specific question as to whether these documents were prepared in the usual course of business, but I believe that the facts surrounding their production would show that.

THE COURT: Well, technically, Mr. Corwin is right, but is there any doubt that this witness would have testified that these were documents kept in the regular and usual course of business?

MR. CORWIN: Probably not, your Honor. I am not sure if they have a reference to the Polarland on them.

THE COURT: There is a reference on them to Polarland.

MR. CORWIN: I don't believe he testified. I am not sure that they actually applied to this particular voyage of the Polarland.

THE COURT: Now, gentlemen, it states, MV Polarland loading May 11 and May -- there can't be any question about it.

They may be received for whatever value, if any, they have.

xxx (Defendant Seven Seas Exhibit C for identification received in evidence.)

MR. SANFILIPPO: Continuing at page 46, line 11:

"Q I note that on each of these invoices which have been marked Defendant's Exhibits 25-A and B, there is a statement 'Paid by Cleve Trust 9/25/70.'

"Can you tell us who'Cleve Trust' is?

"A Probably Cleveland Trust. I think they have a freight payment plan, and the check would come from them.

"Q So you do not know for whose account that check would be?

"A No.

"Q Have you ever received any such payments for the account of Nimpex or Seven Seas?

"A To my knowledge, I really couldn't answer that question.

"Q Do your records show any such payments for the account of Nimpex or Seven Seas?

"A I really don't know."

THE COURT: Of course, you read the questions and answers. I don't know what probative value it has in terms of the case and what you state are the issues in the case. The witness repeatedly states he doesn't know.

MR. SANFILIPPO: If I had had time to edit this, I would have done it.

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Mr. Sanfilippo, almost a week.

And you know what the issues are.

If that's all, then we will adjourn the case without date, depending on the disposition that is made of the motion and, then, from that point on, we will pick it up again.

(Adjourned.)

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PLAINTIFF'S AMENDED
PROPOSED FINDINGS OF
FACT/CONCLUSIONS OF LAW

11-28

COPY RECEIVED
FEB 24 1976
KIRLIN, CAMPBELL & KEATING

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

---x

THE TRAVELERS INDEMNITY COMPANY,

Plaintiff,

INDEX NO.
72 Civ. 3779 (EW)

-against-

S.S. POLARLAND, her engines, boilers, etc., D/S A/S VESTLAND, RICH. AMLIE & CO., A.S., SEVEN SEAS SHIPPING CORP., and PERROSTAHL "GmbH, (corporate characterization fictitious, defendant intended is explained in Schedule A of the Complaint),

AMENDED PROPOSED
FINDINGS OF FACT
AND CONCLUSIONS
OF LAW

Defendants.

---x

AMENDED PROPOSED FINDINGS OF FACT

1. The rights of the parties are governed by the United States Carriage of Goods by Sea Act of 1936 (COGSA), Title 46, U.S.C. §1300, et seq., and the provisions of the bill of lading.

2. Plaintiff, Travelers Indemnity Company (hereinafter referred to as Travelers), is the cargo insurance underwriter subrogated to a claim in the amount of $34,059.34 for damage occasioned to a shipment of 299 coils of cold rolled steel which were carried Cleveland/Antwerp on board the S.S. POLARLAND under bill of lading 1, 2, and 3, dated May 12th, 1970 at New York.

3. Nimpex International Inc. (hereinafter referred to as Nimpex), was the shipper of the aforesaid cargo, which it sold C.I.F. and insured under a Marine Open Cargo Policy No. LA 308, issued by Travelers,

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with Nimpex as a named insured on the policy.

4. In accordance with the terms of the aforesaid Master Policy, Nimpex caused to be issued a Certificate or special policy No. 7335 covering the shipment here in suit, and Nimpex, having endorsed the same, assigned and transferred all its rights provided by the Open Policy to collect from Travelers for any loss, damage or claim with respect to the shipment here in suit.

5. Subsequently, a claim was made upon Travelers by Fabrique De Fer De Maubeuge, Louvroil, France, (hereinafter referred to as Fabrique de Fer), to whom the goods were sold and the documents of title and insurance were negotiated, under the terms of the aforesaid policy and/or certificate, for the damage occasioned to the subject cargo, and Travelers paid the sum of $34,059.34 to Fabrique De Fer therefor.

6. At all times material, the S.S. POLARLAND was a vessel owned by the defendant, D/SA/S Vestland, and managed by defendant, Rich Amlie & Co. A/S. (Answer to defendants, D/SA/S Vestland and Rich. Amlie & Co. A/S, paragraph THIRD).

7. At all times material, the S.S. POLARLAND was a vessel chartered by the defendant, Seven Seas Shipping Corp. (Answer of defendant, Seven Seas Shipping Corp., paragraph 2).

8. The shipment, which consisted of 299 coils of cold rolled steel, was received on board the S.S. POLARLAND at Cleveland, on or about May 12th, 1970, for transportation, carriage and delivery in like good order and condition at Antwerp, under bills of lading 1, 2 and 3, which were issued therefor by World Shipping Inc., as agent only by authority of the Master. The bills of lading acknowledge receipt of the shipment on board the vessel

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in good order and condition except that each of the aforesaid bills of lading were claused with the following legend:

> "Outer wrappers atmospherically rust
> stained. Outer wrappers slightly damaged.
> Some bands damaged and/or missing."

9. The S.S. POLARLAND arrived at Antwerp on or about June 6th, 1970, and commenced discharging operations.

10. Had the shipment been delivered at Antwerp in the same order and condition as it was received on board the vessel and consistent with the notations on the bills of lading, no part of the shipment would have been rejected by Fabrique De Fer.

11. When the cargo was surveyed and inspected by surveyors appointed by cargo and vessel interests during the period June 9th through June 13th, 1970, prior to and during discharge, 16 coils were found heavily ovalized and 182 coils were found damaged, dented, bent, buckled, cut, waved and severely rusted to the extent that they represented a loss of $30,420.19.

12. The damage to the shipment as found by surveyors appointed by and on behalf of both cargo and vessel was of a nature and source different than that noted upon the bills of lading.

13. The aforesaid damage occurred while the said cargo was in the care, custody and control of said defendants as common carriers by water for hire and for which the said defendants have not proved their freedom from negligence nor that the said damage was occasioned by an "excepted cause" under COGSA, Title 46, U.S.C. 1304 (2).

AMENDED PROPOSED CONCLUSIONS OF LAW

1. Plaintiff, Travelers, has established that it is the cargo underwriter subrogated to the rights of Fabrique De Fer, owners of the cargo here in suit, with regard to the damage to the subject shipment found at Antwerp. It is undisputed that when an insurer has paid the full amount of

a loss suffered by the insured, the insurer becomes subrogated to the full extent of the insured's claim to the one primarily liable for the loss. *Link Aviation, Inc.* v. *Downs* (C.A.D.C. 1963), 325 F. 2d 613; *Samincorp.* v. *S.S. RIVADELUNA* (D. C. Del. 1967), 277 F. Supp. 943.

2. The plaintiff has established its *prima facie* case by proving that the shipment of steel coils was received by the defendants in good order and condition except for slightly damaged and atmospherically rust stained outer wrappings and some damaged and missing bands, and delivery in a condition at destination which showed damage of a nature and source different than that noted on the bills of lading and is evidenced by the survey report of Mr. Heureux of Van Peborgh & Co. and his testimony thereto. *Nichimen Company* v. *M. V. FARLAND* (2d Cir. 1972), 462 F. 2d 319; *Spanish American Skin Company* v. *THE FERNGULF* (2d Cir. 1957), 242 F. 2d 551.

3. Defendants, S. S. POLARLAND, D/S A/S Vestland, Rich. Amlie & Co. A/S, and Seven Seas Shipping Corp., have failed to sustain their burden of proving that the damage to the shipment was not due to their negligence or that it was occasioned by one of the "excepted causes" of COGSA, 46 U.S.C. §1304 (2). *Nichimen Company* v. *M. V. FARLAND, supra.*

4. That plaintiff shall recover from the defendants, D/S A/S Vestland, Rich. Amlie & Co. A/S, and Seven Seas Shipping Corp., jointly and severally the sum of $30,423.19 and costs and disbursements of this action.

Dated: New York, New York
February 24, 1976

DONOVAN, DONOVAN, MALOOF & WALSH

By: ______________________________
Charles C. Goodenough
Attorney For Plaintiff
Office and P. O. Address
161 William Street
New York, New York 10038

TO: WALKER & CORSA
Attorneys for Defendants, D/S A/S
Vestland and Rich. Amlie & Co. A/S
25 Broad Street
New York, New York 10004, Attn: Richard A. Corwin, Esq.

KIRLIN, CAMPBELL & KEATING
Attorneys for Defendant, Seven Seas Shipping Corp.
120 Broadway, New York, New York 10006
Attn: Enrico S. Sanfilippo, Esq.

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ir:

Please take notice that the within is a true copy

f a

uly made and entered herein in the office of the clerk

f County and of this

ourt on

ated:

Yours, etc.

Donovan, Donovan, Maloof & Walsh

ttorneys for

161 William Street

Borough of Manhattan, City of New York, N. Y. 10038

To

Sir:

Please take notice that an order of which the within is a true copy will be presented for settlement and signature herein to Hon.

at of

this court at

i- the County of State of New York,

on the day of 19 ,

at 9:30 o'clock in the forenoon, or as soon thereafter as Counsel can be heard.

Dated:

Yours, etc.

Donovan, Donovan, Maloof & Walsh

Attorneys for

161 William Street

Borough of Manhattan, City of New York, N. Y. 10038

To

INDEX NO. 72 CIV. 3779 (EW)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE TRAVELERS INDEMNITY COMPANY,

Plaintiff

-against-

SS POLARLAND, herengines, boilers, etc., D/S A/S VESTLAND, RICH, AMLIE & CO., A.S., SEVEN SEAS SHIPPING CORP., and PERROSTAHL, "GmbH", (corporate characterization fictitious, defendant intended is explained in Schedule A of the Complaint),

Defendants.

AMENDED PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Donovan, Donovan, Maloof & Walsh

Attorneys for Plaintiff

161 William Street
Borough of Manhattan
City of New York, N. Y. 10038
Tel. No.: 964-3553

TRANSCRIPT OF PROCEEDINGS OF MARCH 1, 1976

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At page 3, line 8:

"MR. CLAUDE FRANQUET, called as a witness by the plaintiff, having first been duly sworn, testified as follows:

"Q Mr. Franquet, what is your first name?

"A Claude.

"Q Where do you reside?

"A Route D'Avesnes, Bazay Nord, France.

"Q Mr. Franquet, for whom do you work?

"A For Fabrique de Fer De Maubeuge.

"Q And in what capacity are you presently employed?

"A Administrative manager.

"Q For how long have you been employed by Fabrique de Fer De Maubeuge?

"A Since 1943.

"Q For how long have you been administrative manager?

"A Two years. Before that I was administrative secretary to the company.

"Q Mr. Franquet, I show you this document.

(A document was handed to the witness.) Would you look at it please? Do you recognize it?

"A Yes.

"Q Would you identify it for the stenographer?

"A Yes.

"Q Describe it, sir.

"A It concerns the supply of coils sent by POLARLAND in 1970.

"Q Mr. Franquet, is that not a copy of an affidavit you prepared at my request?

"A I do not understand your question.

"Q Mr. Franquet, is that an affidavit?

"A Yes.

"Q Did you sign that affidavit under oath?

"A Yes.

"Q Mr. Franquet, in paragraph 3 of your affidavit you refer to an invoice.

"A Yes.

"MR. GOODENOUGH: May we mark that affidavit as Plaintiff's Exhibit 19?"

Your Honor, this is the affidavit that was incorporated with our moving papers concerning the amendment of the complaint making Travelers Indemnity the plaintiff in this action. I would ask that it be received in evidence as our 19.

THE COURT: Counsel are familiar with it?

MR. CORWIN: Yes, no objection.

MR. SANFILIPPO: No objection.

xx (Plaintiff's Exhibit 19 received in Evidence.)

MR. GOODENOUGH: Page 5, line 5 --

THE COURT: Is there a translation of this?

MR. GOODENOUGH: Yes, sir.

THE COURT: Since it's been received in evidence won't you give me an opportunity to read it?

MR.GOODENOUGH: Yes, sir.

THE COURT: Well, I suppose I did see it previously.

All right.

MR. GOODENOUGH: Continuing at line 5:

"Q Once again I ask my question, in paragraph 3 of your affidavit you refer to an invoice?

"A Yes.

"Q I show you this document. (A document was handed to the witness.) Would you look at it.

"A This is a reproduction of an invoice we received.

"Q Is that the invoice you referred to in paragraph 3 of your affidavit?

"A Yes, it is."

At that time Mr. Goodenough asked the reporter to mark the affidavit as Plaintiff's Exhibit 20.

MR. CORWIN: No objection.

MR. SANFILIPPO: No objection.

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MR. GOODENOUGH: I ask Plaintiff's Exhibit 20 be received in evidence.

xx (Plaintiff's Exhibit 20 received in Evidence.)

MR.GOODENOUGH: Continuing:

"Q Mr. Franquet, on that invoice there is a stamp there. (Indicating) Do you recognize that stamp?

"A Yes, it is the stamp of the company.

"Q Mr. Franquet, I now show you Plaintiff's Exhibit 3 marked in Evidence at the trial, the Special Cargo Policy Certificate. (The certificate was handed to the witness.) You will notice that in the upper center portion again a stamp appears. (Indicating) Do you recognize that stamp?

"A Yes.

"Q Do you know what that stamp represents?

"A Yes.

"Q Would you tell us what that stamp represents?

"A That is a stamp put on all mail when it is received--at the time of receipt."

Your Honor, for the sake of clarity I would pass up to you the exhibit which has previously been received in evidence as Plaintiff's Exhibit 3.

"Q Mr. Franquet, are you familiar with the purchase of the steel that was shipped aboard the SS POLARLAND in 1970?

"A Yes, I am.

"Q What were the terms of that purchase?

"A The terms were cost insurance rate" -- and there appears to be an error in the transcription at line 14, your Honor. That should be freight, cost insurance freight -- "free out of Antwerp."

THE COURT: I will correct that and make that freight. It's a CIF contract?

MR. GOODENOUGH: Yes, sir.

"Q Mr. Franquet, I show you three bills of lading marked 4, 5 and 6 in Evidence at the trial."

MR. CORWIN: Excuse me. I think you left out the words "free out of Antwerp."

MR. GOODENOUGH: It's in there.

(Testimony read.)

MR. GOODENOUGH: I will continue at 16:

"Q Mr. Franquet, I show you three bills of lading marked 4, 5 and 6 in Evidence at the trial. Would you look at them, sir? (Three bills of lading were handed to the witness.) Do those bills of lading cover the shipment aboard the SS POLARLAND you purchased under the Intereisen invoice.

"A These bills of lading cover this shipment.

"MR. CORWIN: The witness is indicating the invoice

"MR. GOODENOUGH: He is indicating the invoice which was marked Exhibit 20."

B2 "Q Mr. Franquet, I now show you three bills of lading numbered 1, 2 and 3 which bear endorsements on the rear or back. (The three bills of lading were handed to the witness.) Do they also refer to the same shipment?

"A Yes, this is the same shipment and it concerns the same shipment.

"Q On the back of the bills of lading I just gave you there are endorsements. One endorsement is "Nimpex" and the second is "Boschmans Thoumsin." Is that correct?

"A Yes.

"Q Who is Boschmans Thoumsin?

"A That is our agent at Antwerp.

"MR. GOODENOUGH: Let us mark these exhibits 21A, 21B and 21C.

"(Three bills of lading marked as Plaintiff's Exhibits 21A, 21B and 21C for Identification, as of this date.)"

I would ask that the three bills of lading so designated as 21A, B and C be received in evidence.

MR. SANFILIPPO: No objection.

MR. CORWIN: No objection.

THE COURT: These are the same as 4, 5 and 6, are they not?

MR. GOODENOUGH: Yes, sir, except that these two bills of lading contain endorsements and the third does not. Two of the bills of lading contain a signature at the bottom and the third does not.

MR. CORWIN: If I may, the original bills of lading marked were not negotiable. These are the original bills of lading.

THE COURT: In what respect to they differ other than the signature of J. Reynolds which bears on 21A and 21B which correspond to 4 and 5 and they have the endorsement on the back Boschmans Thoumsin who are the agents for Fabrique, is that right?

MR. GOODENOUGH: Yes, sir.

THE COURT: What is the other difference?

MR. CORWIN: The other difference is that the bills of lading marked Plaintiff's 4, 5 and 6 all have stampled on them non-negotiable.

THE COURT: Where is that?

MR. CORWIN: At the bottom, your Honor. These that were marked in Antwerp are original bills of lading.

THE COURT: 21C is also marked non-negotiable. It's only 21A and B that are marked originals and don't have the stamp non-negotiable.

What is the significance of it? What is the point you are raising?

MR. CORWIN: The point is, your Honor, these are the bills of lading that were negotiated and were actually representing what was presented for letter of credit and they are also the only copies --

THE COURT: When you say "these" you are talking of 21A, B and C?

MR. CORWIN: You are correct that C appears to be identical to Plaintiff's Exhibit 4 which is still a non-negotiable bill of lading but they are the only negotiable documents that have been put forward and they are the only bills of lading that are signed by anybody.

xx (Plaintiff's Exhibits 21A, B and C received in Evidence.)

MR. GOODENOUGH: Continuing:

"MR. SANFILIPPO: I will object to these bills of lading being placed in evidence for all purposes as this gentleman has merely identified certain names and nothing else.

"Q Mr. Franquet, did you bring with you a copy of the letter of credit covering this purchase?

"A Yes.

"Q May we see it?

"A Yes. (The letter was handed to Mr. Goodenough.)

"MR. GOODENOUGH: Could we marked the first page of this batch of papers as Plaintiff's Exhibit 22?

"MR. SANFILIPPO: You are marking the first page only, is that correct?

"MR. GOODENOUGH: Right.

"(A group of papers marked as Plaintiff's Exhibit 22 for Identification, as of this date.)

"Q Mr. Franquet, those documents, marked Plaintiff's Exhibit 22 on the top sheet of the group of papers, embrace all the terms of purchase of the cargo aboard the SS POLARLAND?

"A This contains all the conditions for payment, but it is not the order itself. This covers only the mode of payment. It is an acknowledgement to pay or a promise to pay.

"Q Does it contain the conditions under which payments would be made?

"A Yes, sir.

"Q Would you read the conditions from it?

"A It says: "Available at sight" -- it is in English there -- "by draft on...against delivery to company by the following documents: A complete set of bills of lading on board to order and endorse..." -- then "Blonco"...and notify Fabrique de Fer De Maubeuge, 100," and so on, and "Thoumsin Antwerp"; and then the commercial invoice in fourfold or four copies; then a detailed list of stowage in four

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copies, and then the insurance policy or certificate.

"Q Mr. Franquet, as regards the insurance policy or certificate mentioned in the letter of credit, I show you once again Plaintiff's Exhibit 3" -- and I believe your Honor has Plaintiff's Exhibit 3 -- "(The document was handed to the witness) and I ask you to look at it and answer yes or no as to whether that document represented the insurance certificate required under the terms of the letter of credit?

"A Yes."

And then continuing at page 10, line 11:

"Q Mr. Franquet, if you received steel coils with the outer wrappers atmospherically rust-stained, outer wrappers slightly damaged, some bands damaged and/or missing, would you reject that cargo?

"A No."

Continuing to page 11, line 15:

"Q Mr. Franquet, did Fabrique de Fer submit a claim for the cargo damaged on shipping on the SS POLARLAND against Travelers Indemnity Company?

"A All claims or anything of that kind were made through the offices of our agents at Antwer, Thoumsin.

B3 "Q Was Fabrique de Fer De Maubeuge paid for cargo damaged aboard the SS POLARLAND?

"A Yes.

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"Q Mr. Franquet, I ask you to look at a copy of a check. (A copy of a check was handed to the witness.) I ask you to look at the reverse side. Does it bear the endorsement of Fabrique de Fer De Maubeuge?

"A Yes."

Your Honor, the check that was handed to the witness was a check, a copy of a check, previously submitted by defendant POLARLAND and was received for identification only.

At page 12, line 1:

"Q Mr. Franquet, what does that check represent?

"A This check corresponds obviously to part of the indemnity we received, but it also covers other damage. The settlement of damages was made for three vessels successively arriving at Antwerp.

"Q What damage does this check represent?

"A I think it concerns the settlement, but I have not got the details of the settlement per ship. I have not got that here.

"Q Mr.Franquet, in your affidavit which was marked Plaintiff's Exhibit 19, in paragraphs 5 and 6 you state as follows: (Paragraphs 5 and 6 of Plaintiff's Exhibit 19 were read.) Now I have a question pertaining to those two paragraphs.

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"A Yes.

"Q Mr. Franquet, is this check, which I believe is marked in evidence as Defendant's Exhibit B at the trial, representing the payment you referred to in your affidavit?

"MR. CORWIN: I will object to the question.

"THE WITNESS: Approximately, certainly, but I have not got the details."

Page 13, line 21, your Honor:

"Q Mr. Franquet, there came a time in the transaction when you received the bills of lading, which have been marked Exhibits 4, 5 and 6, did there not?

"A I received copies.

"Q And did the copies contain the notation "Outer wrappers atmospherically rust-stained"?

"A Yes, sir. Here they are. (Indicating).

"Q When you noticed those reservations on the bills of lading, did you consider the bills of lading to be in accordance with the terms of your letter of credit?

"A With regard to the first items here, "Outer wrappers atmospherically rust-stained, outer wrappers slightly damaged", it was all right, they said, but for the last one they knew they would have some damage and they would have to claim.

"Q Did you authorize your bank under letters of credit to pay for damaged material?

"A Yes."

The next page is 27, line 6, your Honor, and this question was submitted to the witness by Mr. Sanfilippo:

"Q You previously testified that you were advised of the exceptions taken on the bill of lading and, accordingly, you had to correct or amend the letter of credit. Is this the amendment that was placed on the letter of credit?

(A document was handed to the witness.)

"A This is the receipt from the bank, the acknowledged receipt, that they have given them orders to accept this shipment accordingly.

"Q According to the bill of lading provisions?

"A Yes.

"Q Did the bank transmit those directions in accordance with the directions of Fabrique de Fer?

"A Yes.

"MR. SANFILIPPO: Could this be marked as Defendant Seven Seas Exhibit F?

"(A receipt marked as Defendant Seven Seas Exhibit F for Identification, as of this date.)

"REDIRECT EXAMINATION BY MR. GOODENOUGH:

"Q Mr. Franquet" -- and this is page 27, line 27 --

MR. SANFILIPPO: Are you going to offer that

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exhibit in evidence?

MR.GOODENOUGH: I would ask the exhibit be received in evidence, your Honor.

MR. SANFILIPPO: That would be Seven Seas Exhibit F.

xx (Defendant Seven Seas Exhibit F received in Evidence.)

MR. GOODENOUGH: Continuing, your Honor, line 27:

"Q Mr. Franquet, I again address your attention to the check payable to Boschmans Thoumsin issued by W.K. Webster & Company in the amount of $63,146.87 and which has previously been marked Defendant's Exhibit B. I ask you now, sir, can you identify that check as being the proceeds of insurance for the damage to the POLARLAND shipment?

"A Yes, I can certify that in this check is included the damage sustained on board the POLARLAND."

Your Honor, at this time I would ask that the Defendant POLARLAND Exhibit B be received in evidence. I would think sufficient foundation has been laid to justify its reception.

MR. CORWIN: If I may, your Honor, the only problem is that this figure of $63,146 is not limited to monies that were paid for just damage on the POLARLAND. It includes also--

THE COURT: But the check is marked on the said

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POLARLAND policy 73.35, $34,059.34.

MR. CORWIN: That is correct. I just wanted to call that to your attention.

THE COURT: That was developed in the prior testimony too, was it not?

MR. CORWIN: It is developed in the deposition.

THE COURT: I mean on the trial it was also, the prior trial. It may be received.

The claim in this case is limited to the $34,059.34.

MR. GOODENOUGH: That is correct, your Honor.

xx (Defendant POLARLAND Exhibit B received in Evidence.)

MR. GOODENOUGH: At this point the plaintiff rests its case.

MR. CORWIN: I would like to read some portions of the same deposition into the record, your Honor.

Starting at page 9, line 22:

"Q When the cargo arrived at Antwerp was the cargo damaged only to the extent indicated on the bills of lading exceptions?

"A At first sight these were the only damages."

THE COURT: What page is that?

B4 MR. CORWIN: Page 9, line 22. I read 22 through 29.

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I would like to go now to page 15, line 1:

"Q Mr. Franquet, did you authorize the bank to accept the goods from the SS POLARLAND regardless of the exceptions that were noted by their letter of May 25th, 1970?

"A Yes."

And dropping down to line 15 on page 15:

"Q In any event, Fabrique de Fer knew before payment was made under their letter of credit that the goods under the three bills of lading would be damaged to some extent or other?

"A Yes."

In the deposition "there" should be possessive "their", your Honor.

Now to page 16, line 7:

"Q The coils that you purchased and which were shipped on the SS POLARLAND, to what use were you going to place those?

"A They were to be used either for galvanizing or heating."

Dropping down to line 20, page 16:

"Q What about the reheated coils which are cut into sheets, what use are they put to?

"A They are used for motorcars for the parts that are painted, and also for smaller parts, machinery parts and things like this. (Indicating.)

"Q The witness is indicating objects similar to the ashtrays which are on this table.

"A This is in aluminum, but we also make this kind of thing in steel."

Page 17, line 1:

"Q That is the steel which is obtained from those coils which you import, and it is made from the coils you imported on the SS POLARLAND, is that accurate?

"A Yes."

Going to page 18, line 8:

"Q I wish you to examine this brochure, which has Paxson on the top, and I wish to ask you some questions after you have examined it. (The brochure was handed to the witness.) Do you recognize the purpose of that machine?

"A First of all, I want to point out that I am not a technician but I belong to the administrative part of the firm.

"Q We appreciate that.

"A On the first page there are several machines. The first machine here is a rolling shaft, and it is in there in order to roll this coil.

"Q That is a machine that is used in steel fabrication. Do you have a similar machine or have you seen a

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machine similar to that?

"A Yes.

"Q Have you seen such a machine on the premises of Fabrique de Fer?

"A This part we see. (Indicating.) We have not got this because we have got another kind we use for planing, or how you call it, in a different way.

"Q What do you use for slitting the coils?

"A There are special scissors, and we have special equipment in order to make these narrow slits.

"Q So in your plant you are capable of reducing the width of these coils, is that accurate?

"A Yes."

Going to page 21, line 5:

"Q The claim was made that this material was partly damaged and the insurance company should pay it, so the insurance company said: "All right. We will take off two percent, five percent, or ten percent, and pay you that", which is what is meant by the allowance.

"A Could you repeat the question.

"(The reporter repeated the question.)

"A The insurance company told us that they knew that a certain amount of coils had not been delivered, that they remained at Antwerp.

"Q I am going to move to strike that. It is not responsive. I want to know if you have any knowledge of the fact that an allowance was made by the insurance company for damage to 182 coils out of the entire shipment. That should be a yes or no answer.

"A No."

Going to page 22, line 17:

"Q Is that the record of Mouzon & Company? Mr. Franquet, you said you cannot distinguish between the damaged material on the SS POLARLAND because of the fact it was all mixed up with two other shipments. Is that accurate?

"A We have been indemnified for three shipments but I cannot give the details of how many coils in this case.

"Q Do you have any knowledge of the fact regardless of the quantity that some of the coils were sold for salvage?

"A Yes.

"Q Did Fabrique de Fer ever come into possession of those coils?

"A No, never. They remained at Antwerp."

Going to page 24, line 17:

"Q Would not Messrs. Thoumsin have to have had an original bill of lading, No.3?

"A I think so. Each page represents one part of the whole shipment, and this is representing the shipment.

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to be made. We reserved all objections except as to form for the trial, sir.

THE COURT: Since I am sitting without a jury I will take it and if it's not relevant or admissible I won't consider it.

MR. CORWIN: Dropping down to line 26, page 25:

"THE WITNESS: May I speak? I have a letter here sent to Boschmans Thoumsin dated 27 May, 1970 mentioning" --

B5 THE COURT: Where are you at?

MR. CORWIN: Line 26 on page 25 just slightly below where I was reading.

"THE WITNESS: May I speak? I have a letter here sent to Boschmans Thoumsin, dated 27th May, 1970, mentioning "...for your operations we send you enclosed original bills of lading in duplicate for each of the three items of different formations".

"Q Is that the letter from your company?

"A Yes.

"Q So that your company did have the original bill of lading No.3, is that correct?

"A Yes.

"MR. CORWIN: Would you assume that original bill of lading No.3 would have been in the same form as Nos.21A

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and 21B?

"MR. SANFILIPPO: I object to the form, and of course I will object to the question itself in due time.

"THE WITNESS: Yes."

MR. SANFILIPPO: I objected as to form, your Honor, and I continue my objection.

THE COURT: It may be received on the same terms as the prior material was received.

MR. CORWIN: Dropping down to line 23 on page 26:

"Q Do you have any knowledge as to who paid for the services of the discharging stevedore?

"A We asked Messrs. Thoumsin to see to the unloading and we paid it in their expense.

"Q When you said you paid them, you paid Messers. Thoumsin who in turn paid the stevedore who discharged the cargo for you, is that correct?

"A Yes, that is right."

Page 28, line 10:

"Q I believe you stated earlier, and I want to make sure, that Messrs. Thoumsin acted as your agent in Antwerp, is that right?

"A Yes.

"Q In that capacity they are more or less your inward freight agency handling your paperwork, is that correct?

charter first went from Vestland to Molena Trust Incorporated, from Molena Trust Company to Ferrostahl, and from Ferrostahl to Seven Seas.

MR. CORWIN: That is correct.

MR. SANFILIPPO: Yes, your Honor.

THE COURT: All right.

xx (Defendant Vestland Exhibit O received in Evidence)

MR. CORWIN: Now, I would like to offer as P the charter party between Molena and Ferrostahl.

THE COURT: All right.

xx (Defendant Vestland Exhibit P received in Evidence)

THE COURT: That is a time charter, is it not?

MR. CORWIN: That is correct, your Honor.

I would offer as Exhibit --

THE COURT: That is between Ferrostahl and Seven Seas you are offering now?

MR. CORWIN: I believe that one is already in evidence. The charter party between --

THE COURT: What exhibit is that?

MR. SANFILIPPO: 13.

MR. CORWIN: That is Plaintiff's 13, your Honor.

THE COURT: All right.

MR. CORWIN: I would like to offer now as POLARLAND's Exhibit Q a document which was attached to a notice to admit which is a contract between Great Lakes International Corporation and Seven Seas Shipping for stevedoring services.

MR. SANFILIPPO: That is being admitted for limited purposes only, isn't it?

MR. CORWIN: It's being limited for what it represents to be on its face.

MR. SANFILIPPO: May I see it, please?

MR. CORWIN: I will read the admission, your Honor, if necessary.

MR. SANFILIPPO: All right.

MR. CORWIN: Mr. Sanfilippo has requested that I read the admission and Seven Seas' response, your Honor. In a request for admission served under Rule 36, of the Federal Rules of Civil Procedure, by defendants in paragraph 3 the attached document marked Exhibit C, which has now been marked I believe Exhibit Q, is an authentic and genuine copy of the contract between Seven Seas Shipping Corporation and Great Lakes International Corporation covering stevedoring services rendered during the 1970 navigation season.

The response to that by Seven Seas, and this is in answer to a request for admissions dated August 28, 1974, paragraph 3, was "Seven Seas Shipping Corporation admits that the document attached as Exhibit C, which again is Q here

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to defendant's requests for admission is a copy of a contract between Seven Seas Shipping Corporation and Great Lakes International Corporation."

MR. GOODENOUGH: I have no objection.

MR. CORWIN: Paragraph 4 in the request for admission, the shipment which is the subject of this lawsuit was loaded and stowed on board the SS POLARLAND pursuant to the terms of contract, a genuine and authentic copy of which is attached here to Exhibit C.

The response to No.4, Seven Seas Shipping Corporation admits the statements set forth in the request for admission as Item No.4.

Your Honor, I am thinking it may be easier to mark this.

THE COURT: What that all adds up to, unless I am mistaken, is that Great Lakes International was the stevedore engaged by Seven Seas which loaded the shipment in question.

MR. CORWIN: That is correct.

MR. SANFILIPPO: No, sir. The question here is for whom did it load.

THE COURT: I didn't get to the point for whom. I say that Great Lakes International was engaged by Seven Seas to engage in stevedoring operations and are you disputing that Great Lakes International was the stevedore that loaded the shipment in question on board the vessel?

MR. SANFILIPPO: Not the pure loading, no, sir.

THE COURT: Pardon?

MR. SANFILIPPO: We are merely disputing the fact for whose account they loaded. We did not dispute that they loaded.

THE COURT: As long as you are disputing what is our position on that, for whose account do you say that Great Lakes International loaded the shipment aboard the vessel?

MR. SANFILIPPO: For the shipper, sir.

THE COURT: And you are saying that even in the light of the agreement entered into between Seven Seas and Nimpex?

MR. SANFILIPPO: Yes, sir.

MR. CORWIN: Your Honor, I was going to say there is an invoice in evidence which is directed to Seven Seas from Great Lakes International for the loading.

MR. SANFILIPPO: I will question that later, sir, at the proper time.

THE COURT: What is your position about that, Mr. Corwin? For whom did Great Lakes load this shipment on board the vessel? You seem to speak so clearly that I am a little puzzled by the issues raised about it but your adversary has raised an issue about it.

MR. CORWIN: My position is, your Honor, that Seven Seas Shipping Corporation contracted for the services that were rendered by Great Lakes International in loading the terminal or loading the vessel. We will restrict it to loading the vessel. That Great Lakes International Corporation sent invoices to Seven Seas for the services that it rendered in loading the vessel and both those documents are in evidence, and thatis my position, your Honor.

THE COURT: All right.

MR. SANFILIPPO: He fails to state that the invoice was erroneously sent to Seven Seas, transferred to Nimpex who paid it.

THE COURT: Go ahead.

MR. CORWIN: I think I would like to read a few more of the admissions.

THE COURT: Go ahead.

MR. CORWIN: I read paragraphs 3 and 4. Paragraph 5 is the request "Is Seven Seas Corporation entered into an agreement with Great Lakes International under the terms of which Great Lakes International would be the exclusive stevedore in the Port of Cleveland for the 1970 season for Seven Seas Shipping Corporation", and the response is "Seven Seas Shipping Corporation admits the statement set forth in the request for admissions as Item No.5."

With regard to Request No.6, which dealt with the original bill of lading No.2, which I think is 21B, Plaintiff's 21B here, in the request for admission concerning that bill of lading there was a request that it be admitted, that this was an authentic and genuine copy of the bill of lading and contains the signature as we have discussed earlier and the response was basically a denial basically on the ground that Seven Seas maintained it could not verify whether the bill of lading was signed by J. Reynolds, its employee.

In disucssions with Mr. Sanfilippo last week it was agreed between us that J. Reynolds, the employee of Seven Seas, Seven Seas Shipping Corporation believes that the signatures on the bills of lading and the letter that was marked as Plaintiff's 15 is the signature or contains the signature of its employee, J. Reynolds.

MR. SANFILIPPO: Upon the express condition, sir, that that admission does not in any manner give John Reynolds or J. Reynolds any authority to sign that bill of lading for the account of Seven Seas. It is with that express reservation rather than put counsel to a great deal of proof that we agreed to admit that J. Reynold, a former employee of Seven Seas, signed the bill of lading.

B9 But we must reserve our position that it was not jgds

by authority of Seven Seas, thathe was signing for someone else and the testimony will bring that out, your Honor.

MR. CORWIN: To make sure that we have a formal agreement, I want to be sure that we know what we are agreeing to. If I state this correct me if I am wrong.

Seven Seas Shipping Corporation agrees that the signature J. Reynolds or John Reynolds on exhibits which are marked as Plaintiff's --

THE COURT: Where are those exhibits?

MR. CORWIN: Plaintiff's 16, 21A and B contain the signature. Seven Seas Corporation believes the signature J. Reynolds on those documents to be the signature of its former employee, J. Reynolds.

THE COURT: Where are those documents to which you are making reference?

Is Mr. Reynolds available?

MR. CORWIN: We have all looked for Mr. Reynolds.

MR. SANFILIPPO: We have sought to locate him, your Honor, and cannot do so.

THE COURT: I do not know why there should be any real issue about that just looking at those documents.

MR. CORWIN: I don't believe I completed the stipulation.

Continuing, with the caveat that Seven Seas

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Corporation does not admit that John Reynolds had the authority to sign those documents on behalf of Seven Seas.

MR. GOODENOUGH: Your Honor, I would respectfully ask one pertinent question. Was John Reynolds an employee of Seven Seas on the 12th of May 1970?

MR. CORWIN: That was in the stipulation.

MR. GOODENOUGH: If that is in the stipulation then plaintiff has no objection.

MR. CORWIN: Are we agreed?

MR. SANFILIPPO: I have already stated he was an employee of Seven Seas.

MR. CORWIN: One further thing, your Honor.

In going through the transcript of the trial record I noticed there was one line which was not read from Mr. Greg's deposition. I don't think it was intentional. It seemed to have been just skipped somehow. Maybe it was the reporter, I am not sure. I would like to read that.

The trial record on page 242 contains this portion of Mr. Greg's testimony and the line I would like to read is from page 17, line 17. It is line 17. Maybe I should read the question and answer. It was an interrupted answer starting at page 17, line 13 from Mr. Greg's deposition:

"Q Now, you are referring to Exhibit 19?

"A Yes, this would pertain to the cargo. The wharfage charge on the invoice pertains to the cargo other than this.

"Q Other than that indicated on Exhibit 18 which is POLARLAND G?

"A Right."

As POLARLAND Exhibit R, I would offer a credit invoice which was identified by Mr. Resnick on the occasion of his deposition.

MR. GOODENOUGH: No objection.

xx (Defendant POLARLAND Exhibit R received in Evidence.)

MR. CORWIN: Now I would like to call Capt. William Wheeler.

WILLIAM WHEELER, called as a witness on behalf of the defendant Vestland, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORWIN:

Q Capt. Wheeler, could you tell us your qualifications as what we would call a maritime expert?

A Yes, sir. Since 1935 I started to sea as an ordinary seaman. In 1939 I was enrolled in the Maritime Commission Cadet Training Corps, graduated from that course of training with a third officer's license, proceeded through the ranks of third officer, second officer, chief officer.

Finally in 1945 I was licensed as a Master. I sailed as Master up to 1950 when I was called to active duty with the Navy and came back to merchant shipping at the end of 1952. I came ashore six months later also at the very end of 1952 and I worked as a stevedoring superintendent here in the Port of New York.

In 1955 I went back to sea again briefly as Master and when I came ashore again at the end of six months I came into my present activity as a marine surveyor and a marine consultant That was in 1955.

Q Have you had experience with shipments of steel?

A Yes, sir, I have.

Q What is the nature of that experience?

A As a ship's officer I was aboard ships that carried consignments of steel products, coils of steel sheet up to about five, six-ton.

As a stevedore I worked, loaded ships with steel coil products up to about 12 to 15-ton. As a surveyor I have been involved at various times with coils of steel plate up to about 25-ton.

Q Thank you.

Could you explain for us what the word ovalization means to you and what the word ovalization in relation to deformation means to you and if there is a difference, what that difference is?

A Ovalization -- this is the first time I have heard that expression. We have used out-of-round or permanently out-of-round. That means that the coil has been permanently deformed or damaged. It means that the inner coils or the inner part of that coil, of that particular coil, has been permanently creased, the material in the coil has been permanently creased. So that the coil is defective.

Out-of-round or ovalization rather on a loose coil as it is resting, a loosely wound or spooled coil as it is resting on a plane surface would be oval as it's resting on its own weight. If it's a tightly coiled, tightly spooled coil as it rests on a plane surface it supports its own weight on the line of tangency.

The plane is tangent to the circumference of the coil. A properly spooled coil rests on a line of bearing. A loosely spooled coil rests on a flat surface similar to a flat tire on an automobile.

Q When you say loosely spooled, maybe you can go into a little more detail as to what you mean by loosely spooled and the difference between a loosely spooled coil and a tightly spooled coil, the nature of the coil if it's loosely spooled?

A The coil when it's properly spooled, tightened spooled, and has the retaining bands, the bands through the core that retain the coil from even more tightly wound as it sustains the vibrations in handling it will never grow in circumference because the circumferential bands keep it in size but the inner core coils tend to tighten up really in a helical direction. It allows the layers of the coil to become looser in relation to each other.

B10 It's not a firm coil. It will not even support its own weight on a line of tangency. Any weight bearing on it will tend to deform that coil if it is what we call a loose coil.

Q A loosely wound or spooled coil, how does that occur? In other words, what would cause that?

A It can be --

Q What are possible causes?

A Deficiency at the time that the bands were put on it at the mill, at the steel mill. It can be that in handling from that point onward that it was dropped and the retaining bands that retain the coil in its original shape had been burst or had slacked off to allow the coil to become loose.

Q You are talking about bands. Maybe you can look

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at some photographs that have been marked as Plaintiff's Exhibit 12 and tell us if there are bands on those coils?

A Yes, sir, there are bands on coils in varying numbers. Some of these coils show two bands. Some of them show four bands in the core band. The general run of them show two circumferential bands on the coil.

Q Maybe you can explain for us what is the difference between a circumferential band and a core band?

A The circumferential band keeps the coil from expanding in size. It can't get any bigger in size. The core bands keep the inner, the axis of the coil or attempt to keep the axis of the coil limited in size. It can't get any smaller. So if it gets smaller then the coil becomes loose and when it's loose it's susceptible to damage of the type shown in page 2 here which can be called a pear shaped coil.

THE COURT: I take it the circumferential band is on the outside?

THE WITNESS: Yes, sir, it runs around the circumference.

THE COURT: And the purpose is to hold the structure tight and compact to prevent its flattening out or expanding?

THE WITNESS: Yes, sir.

Q What is --

A Internally.

Q What is the effect of missing bands and again you mentioned circumferential bands and core bands. What would be the effect of missing bands that go through the core?

A That would be obvious if all the bands -- through the core, I am sorry. The core bands keep the inner parts, the hole, like the hole in the donut, from contracting, prevent the hole from contracting, allowing the material in the coil to invade the area of the hole.

THE COURT: Where do the core bands go, from where to where?

THE WITNESS: Through the core.

THE COURT: Through the center part that is opened?

THE WITNESS: Yes, the core band goes through and around and it is fastened with a clamp.

THE COURT: What you referred to before as a circumferential band is on the outside?

THE WITNESS: Yes, sir. There are circumferential bands inside the cover, the steel wrapper, and circumferential bands outside the core wrapper.

Q These coils depicted in the photographs have wrappers, I believe?

A Yes, sir, they do. They have sheet metal wrappers.

THE COURT: Is it correct to say that ovalization is a sort of flattening out of the coil?

THE WITNESS: Yes, sir, it could be either temporary or permanent.

Q If you have deformation that is in a way an ovalization, is that correct?

A That is right.

Q But an ovalization is not necessarily a deformation?

A It's not a permanent deformation, no.

Q It's not a permanent --

A It's not necessarily a permanent deformation. As I indicated, the pear shaped coil in these photographs, that is permanent. That is a permanent deformation.

Q If you have a tight coil, in other words, tightly wrapped -- and when I say wrapped, tightly wound, and with bands that are not loose and are intact, let's say two bands circumferentially, four bands through the core, what would be the character or the nature of a coil that is in that state?

A If it's properly wound and the coil was firm, solid, it would support its own weight on the line of tangency, as I indicated before, and it would sustain the weight of coils piled on top of it and we go 10-ton coils three-high.

It's not unusual to stack the coils three-high and they support each other. If they are put in stow properly, supported laterally on both sides, continuous right across the ship and the upper coils are rested in cant lines of the lower tier of coils they will support their own weight and these photographs show it. At two-high they are supporting their own weight, the middle picture on page 1 principally.

B11 Q If a tightly wound or tightly spooled and tightly banded coil is placed, let's say, on the floor here in front of us, would it be ovalized?

A If it's tightly wound under proper tension, no. It will bear itself on that tangent, that line of bearing.

Q If it has bands that are missing and is somewhat loosely spooled, what would happen if the same coil is placed simply on a flat surface?

A The lower circumference of the coil where it's resting on the flat surface would tend to flatten out. It's common sense.

Q Would you characterize that as a permanent type of deformation or crimping?

A No, that is not permanent. If you roll the coil the flat part would move around its circumference. But it's a loose coil.

Q Looking at the coils that are depicted in the photographs in Plaintiff's 12, of those coils that are displayed there, how many, in your opinion, appear to have permanent deformations?

A I found three coils in these pictures. Studying these pictures I found three coils that were permanently deformed apparently by looking at the pictures. Two of them have attained the shape of a pear. They are permanently deformed.

There are two coils in this whole group of pictures that shows permanent deformation in that form. There is another that shows deformation in a slightly different form and that is the bottom photograph on page 1, the one that is sort of oval and it was resting on the convex surface of a solid, firm coil in stow and you can see the shape of this firm coil below imparted to the bottom of the upper coil in stow.

This one coil. The other two are the two pear shaped coils. Three coils, as I see it, permanently damaged.

THE COURT: Would it be a proper use to say that another expression for a deformity is that the coil itself is undulating, sort of running in waves instead of having what normally would be its flat surface?

THE WITNESS: If a coil that had been permanently damaged was unspooled, laid out flat, it would then be undulating, yes, sir.

THE COURT: And it couldn't be used for its original intended purpose?

THE WITNESS: It couldn't be used in a steel fabricating mill where they have automatic feed where they put the coil through the automatic feed and into the production line.

Q Capt. Wheeler, this shipment we have been discussing here, a total of 299 coils, you have reviewed those photographs before coming in here today?

A Yes, sir, I did.

Q In some detail?

A Yes, sir.

Q Approximately how many coils do you believe are illustrated in those photographs?

A I have separated them out to group A and group B. There are really only two groups of coils in all these photographs with different camera angles, different shots of the same coils.

Group A and group B, the page 1 I refer originally to group A. That shows not more than 12 coils. I can't be certain looking at any of the photographs but I can see six on one tier and there could be six behird that one, behind not necessarily representative of 299 coils.

THE COURT: Mr. Corwin, all I am suggesting is here you have a witness looking at pictures. I am not sure he has pictures of all the coils that are involved in the shipment and I suggest to you that you can put his testimony against the surveyor who was on the scene and made an observation.

MR. CORWIN: I believe, your Honor, in the survey report that was marked into evidence as Plaintiff's 11 he indicates that the coils that were separated, the 16 coils, were placed into a covered shed which I believe is what this is. These photographs were taken I believe in a covered building.

THE WITNESS: They appear to be.

MR. GOODENOUGH: If I may, as I recall the surveyor's testimony, Mr. Heureux, there were 16 coils that were so heavily ovalized they would not be accepted by the receiver, Fabrique de Fer De Maubeuge.

They were sold as is for salvage. There were some additional 30 coils that were ovalized but were nevertheless accepted by the receiver and a total of 182 coils that bore mechanical damage and slight ovalization.

That claim, that is the claim aside from the 16 heavily ovalized salvage coils, came to 19,450 some-odd

Q When we talked --

A The others I couldn't say until they were stripped. You would have to strip them. No one could tell until they were stripped.

Q Capt. Wheeler, there are measurements in the report which was discussed with Capt. Heureux at the time he testified. There was a verticle measurement given and a horizontal measurement given. There was some discussion about these measurements.

If you have a vertical measurement and a horizontal measurement, how do you figure the out-of-round necessary or the ovalization?

A You would take the average of the two, one-half of the difference between the two, because if you took the whole -- let's say it was out-of-round, one inch greater in the horizontal than the vertical, and you took one inch off the horizontal and you put it on the vertical due to the fact that it's a circle it would not come in one inch. In order to put one inch on the vertical it would be a function of the pi which works in there. It would be a mathematical function. It wouldn't be one inch off the horizontal to put one inch on the vertical.

Q If you take one inch on the horizontal and put it on the vertical you wind up with a squished coil?

A It would be out-of-round in the other direction or an out-of-perfect circle.

Q If you were viewing coils excepting the three you mentioned that you believe to be deformed or permanently effected, other than those three, if you were clausing bills of lading or had bills of lading and were possibly thinking about putting some exceptions on them, what would you indicate the condition to be of the other coils?

A As the ship's officer receiving this type of cargo in this condition, I would clause --

Q Excepting the three.

A The dock receipt or the mate's receipt which essentially would wind up on the bill of lading, as to the covers and bands were rusty, if they were indeed rusty, that the covers were torn or damaged if they were indeed torn or damaged, and that the condition of the contents was unknown to me.

Q Can you say those again for us?

A I said I would clause the mate's receipt to the effect that the wrappers and the bands were damaged or rusty. I would --

Q When you say the bands were damaged --

A The bands could be damaged or missing. The covers could be rusted or torn and I would be certain to

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clause it that the condition of the contends was unknown because if a band is missing I don't know if the coil is loose or tight.

Q Inside the wrapper?

A Inside. If there were marks of the gear, the chain marks or sling marks, I would also -- that is what I was trying to think of -- I would also note the sling damage.

MR. CORWIN: Thank you.

THE COURT: Suppose we take a short recess now.

(Recess.)

(In open court.)

MR. CORWIN: Mr. Goodenough has permitted me to ask one or two more questions.

THE COURT: Go ahead.

DIRECT EXAMINATION CONTINUED

BY MR. CORWIN:

Q Capt. Wheeler, how do bands become broken, these bands we were discussing before?

A As a result of the handling process of the coils.

Q What type of handling would result in broken bands?

A If they are dropped or come to rest either by a crane or fall or by a fork lift truck landing quite heavily and the band is in the proper position the inner bands that retain the core can burst. From then on the coil is loose to varying degrees.

Q The deformation of the type we saw, the two or three that you described as being pear shaped or deformed, how would that type of damage occur?

A That would occur when the loose coil -- a loose coil is necessary first, a loose coil is placed in stow with just the same as all the other firm coils would be placed then the loose coild would be forced down into the cant line of the two coils below it and it would assume this pear shape.

As the inertial forces work on the heavy coils in both wings when the ship rolls the coil would tend to come down and as the inertial forces go in the opposite direction it would seize the coil.

Again the inertial forces go the other way and the coils go down. It would be a process of squeezing and dropping. The end result would be the pear shaped coil.

Q What would prevent that from happening if you had a coil that was -- strike that.

If you had a coild that was tightly wound and strapped what would happen to that coil?

A And placed in that same position?

Q Yes.

A It would withstand the inertial forces in the adjoining coils. It would not be abel to be squeezed and, therefore, it could not be dropped down.

MR. CORWIN: Thank you.

CROSS-EXAMINATION

BY MR. GOODENOUGH:

Q Capt. Wheeler, do you normally conduct a survey of steel by using someone else's photographs?

A Not normally, no, sir. This is not a survey of steel. I am not conducting a survey of steel here.

Q Captain, would you describe to us how you would normally survey a cargo of steel coils such as those photographed?

A If I was fortunate enough to attend the unloading of the steel or the loading I would like to see the coil as its previous place of rest, if it be on the ship, fine, or if it be on the dock and loaded. I would like to then survey or visualize, see every coil, and I would note particularly the bottom, where it was resting on the flat surface. If indeed it was resting on an even surface this would be important.

If it were resting on a tangent line of bearing, tangent to the circumference of the coil it would be, in my estimation then, a firm, solid coil suitable to be placed in stow.

If it was not, if it was resting such as this coil here is resting on more or less a flat surface, I would indicate that coil be nothing but top stow. Because that is a loose coil.

What degree of looseness I don't know. I couldn't tell until it was stripped.

Q Captain, what you just said then is in contemplating the loading of the cargo on board a ship you say a loose coil should be top stowed?

A Yes, if anything it should be top stowed if it's not rejected. If it's so loose that it's obviously way out then it should be rejected.

Q Rejected by the carrier?

A It would have been rejected, I expect, in the terminal when it was received into the terminal and if it happened in the terminal then it would be rejected by the ship.

Q If such a loose coil as you describe it were placed top stow could the coil be carried safely to the destination on an ocean voyage?

A Depending on the degree of losseness on the particular coil.

Q To a degree, if a coil is loose and stowed on bottom stow such stowage would contribute to its damage if there was damage?

A Such stowage would, definitely. If it wasn't supported laterally on both sides by the adjoining coil or some material pushed between the coils, if it wasn't supported laterally and as the weight was introduced on top it would flatten out because it's a loose coil, no doubt about it.

Q Then proper stowage of a coil such as this would be top stow and not bottom stow?

A If it's a noticeable degree it should be top stowed if anything, if not rejected.

Q Capt. Wheeler, once again going back to surveying coils of steel at out turn, would you say it's a fair statement, in your opinion, is it a fair statement to say that the surveyor must view the coils himself to determine whether the damages, if any, in an ovalized or deformed coil are of a permanent nature?

A Yes, I would say so. It would be most helpful to view the coils yourself but a photograph such as the one shown here where the coil is -- this is permanent damage, no question about it, in the photograph. If I was actually surveying the coil, yes.

Q Which one is permanent damage?

A This one.

Q That is the center photograph on page 2?

Q On the top photograph there is a coil designating D or with a marking 42.

A Yes, sir.

Q In your opinion is that coil permanently damaged?

A I couldn't tell you from this photograph. It's flat on the bottom so it could be loose to a minor degree and I don't see any sharp radius in that core, any crease, sharpe change of the direction of the plate. I couldn't tell without stripping the cover off and then you could tell.

Q So then --

A If I had to make a guess or opinion, I would say no, that coil is not permanently damaged, permanently creased.

Q I direct your attention to this one corner, the right-hand side. Does that look as though there is a crease there?

A That is a sling mark or gear damage from the lifting apparatus installed there. That is not damage or compression of the entire coil. The lip of the core is damaged by the gear, by the slings.

Q Then the only way you can ascertain the extent of ovalization or permanent damage would be to remove the covering?

A The only way to accurately and precisely determine it would be to strip the cover off of it. But to determine or to decide whether it was necessary to strip the cover off that coil, I would say no.

Q I direct your attention now to the coil below it to the right.

A This one is on the deck.

Q The photograph below it to the right.

A Okay.

Q I would like your opinion as to the condition of that coil.

A That coil is the same one that is shown on page 1. Do you see the repaired tape with a strap over it, there is a repaired tape with a strap over it. It's the same identical coil in a different camera angle.

Q Captain, I am afraid you have lost me. Would you please --

A This is one of the two pear shaped coils that I characterized as a pear shaped coil. This is the end of the coil that is not out of shape so much.

The other end of that coil is shown on this picture. There it is. It is up on the second tier. That is the other end of that coil.

Q On page 7, Captain, the top photograph.

A It's the same as the middle one.

going to crimp the paper, it's a sharp change of direction on the core but there is a fair radius of that coil. This metal is not permanently crimped but the inner one would be actually creased, maybe 25 percent through the thickness of the coil.

You would have 25 percent of that coil that would be damaged. It would be permanently damaged. The other 75 percent would be usable.

Q And the only way you can determine that would be to take off the covering?

A Yes, to determine the precise degree would be to take off the cover.

Q Captain, in your earlier testimony you described or you started to describe the exceptions that a first mate or you would have taken as first mate to cargo as it was put aboard this ship. If the covers were torn and the contents were exposed would you note the condition of the contents as exposed?

A Not that part. I wouldn't note the condition of the contents unless I could see the contents, the entire contents. I couldn't see it through a tear in the wrapper.

Q If the contents were exposed then you would note that which you could see?

A If the contents was entirely exposed, yes, and

I could see the edges of every plate, yes, I would note the damages on the edges of every plate.

Q You mentioned that you would have noted sling marks or sling damage?

A Yes, sir.

Q If such was occasioned?

A If they existed, yes. There again it would be through the wrapper.

Q I beg your pardon?

A The sling mark would be on the wrapper. I don't know if it indented the edges of the coil. I wouldn't know that.

Q But to protect the ship you would note the sling marks?

A Yes, sir. Damage: The wrapper was damaged.

MR. GOODENOUGH: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. SANFILIPPO:

Q Captain, would you point out the roll which you say was loose.

A I didn't say roll, I said coils. In the middle photograph on page 1, on the first page, the coil in the lower tier, second from the left, I have my finger on it here.

is about three inches. I wouldn't expect that to cause a permanent crimping or creasing of the contents.

Q Would you say that a coil which has had its ID reduced to 27.6 by 15.7, would that give you a permanent crease or crimping?

A Would the overall picture confirguration be oval or would it be pear shaped? If it was pear shaped you probably have crimping. If it was oval you probably do not have crimping.

B15 Q I do not have these differentiations because all I can do is go by what the surveyor says. But that is the dimension he gives me.

A If it was possible to take that dimension I would expect it to be something similar to a coil that is shown here, this one. That is more or less oval in configuration rather than pear shaped.

Q Isn't the answer that before you can tell if there was a crimping or permanent deformation that you would have to take the outer wrapping off?

A I already said that.

Q Please say yes or no.

A If it was pear shaped, yes. You could pretty accurately determine that it was crimped. If the general configuration of the deformation was oval I would expect, no, it wasn't permanently crimped.

Q Let's go back to the question I asked you now. If these figures are given to you, 27.6 by 15.7, there is a possibility that they are crimped inside?

A Again, I couldn't say positively on that itself. I couldn't firmly assure myself that I would not have to look any further.

Q If a surveyor, based upon those facts, declared that that particular coil should be sold on an as is, where is basis, without opening it --

A I couldn't say.

Q Would you consider that to be proper procedure?

A No, sir. You would have to take the cap off that coil to look at the edges of it.

Q So you would have to look at the inside of the coil before you could determine if that coil was permanently damaged?

A Yes, with those measurements that you just gave me.

THE COURT: Suppose it appeared pear shaped as you referred to it before?

THE WITNESS: Then I would want to strip the cap off both ends of that coil to see whether it was, in fact, creased on the inner core section. You automatically strip the pear shaped ones. You have to make a judgment on the oval shaped ones.

Q I don't know if this has been done but were you given this report of survey to examine before testifying?

A I think I did see this about six months ago or so.

Q Then it's unfair to ask you the question I wanted to ask.

A I didn't commit it to memory.

MR. SANFILIPPO: That is all I have.

REDIRECT EXAMINATION

BY MR. CORWIN:

Q During loading of the coils into a vessel is it possible the bands can be broken?

A Yes, sir, if the coils are dropped or allowed to land heavily it can break the core bands.

Q In fact, anytime they are lowered, placed down on a flat surface or hard surface, the possiblity is there of the bands breaking?

A Depending on the degree of roughness of handling.

Q But the bands breaking is a handling problem?

A Yes, sir, a result of handling.

Q You mentioned sling marks. These are going to put marks on the steel packaging or wrapper?

A The edges of each layer of coils could be damaged by the sling, principally the outer layer and the inner layer.

Q But the packaging itself is what you are going to see as you are standing there looking at it that has some marks on it, is that right?

A The wrapping is damaged, right.

Q The wrapping is damaged?

A Right.

Q Mr. Goodenough asked you several questions about these photographs.

Again, although there is some duplication particularly of what you characterize as the pear shaped coils, is that right?

A Yes, sir. There are several photographs of each of the two pear shaped coils.

Q But of the total coils in there, in your opinion, the ones that would need to have the cap removed to check on creasing or some type of deformation of the core or percentage of the core, those two or three that you mentioned are the ones, in your opinion, that would need to be stripped or have the caps removed?

A Examined further, right.

Q What about the remaining ones?

A The remaining ones, from what I see here on the picture, I couldn't say whether they -- as far as ovalization, permanent deformation from out-of-round, I don't see any that would appear to me to be permanently out-of-round.

MR. CORWIN: Thank you.

RECROSS-EXAMINATION

BY MR. GOODENOUGH:

Q Capt. Wheeler, concerning those that you just said do not appear in the photographs to be permanently out-of-round, would it be necessary then to conduct a further examination removing the caps and looking at them?

A From what I saw here I would say no. The fact that they are out-of-round with the flat part on the bottom means to me that it's a loose coil.

Q And there could not be any damage inside?

A I wouldn't expect to find any crimping or creasing damage and I don't think there could be.

Q There could not be?

A Due to what we are talking about here, the pressure, the squeezing of the coils either laterally or vertically. You wouldn't have it because they haven't been squeezed severely enough.

Q But if a surveyor took the caps off then he would be able to visualize the extent or the absence of damage?

A Right, and at the same time I would determine the degree of sling damage to the edges of the coil.

MR. GOODENOUGH: Thank you.

THE COURT: What do you refer to by the "caps", they take the caps off?

THE WITNESS: The covering of the end of the coil like a donut shaped coil, a piece of metal. You have to take the cap off to see the edges of each coil, each layer.

THE COURT: The witness is excused.

(Witness excused.)

THE COURT: Any other witnesses?

MR. CORWIN: No, your Honor.

If I might have just minute.

(Pause)

MR. CORWIN: That is all I have.

THE COURT: Does that mean the defendant Vestland rests?

MR. CORWIN: Yes, your Honor, we rest.

THE COURT: How about Seven Seas?

MR. SANFILIPPO: We are ready to proceed. We have two witnesses and six or seven lines to read in, if I could before the adjournment read in these lines and then call witnesses after lunch or start now.

THE COURT: How long will you take with that?

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MR. SANFILIPPO: Three minutes.

THE COURT: Let's do that an recess for lunch and proceed this afternoon.

MR. SANFILIPPO: My opponents have agreed, your Honor, that these invoices from Sharon Steel Corporation be placed in evidence without giving any consideration to the value set forth therein. The cost that Sharon charged has nothing to do with probable damages. However, they are 36 sheets, marked as Exhibit G if the Court so desires.

xx (Defendant Seven Seas Exhibit G received in Evidence.)

THE COURT: What else do you have?

MR. SANFILIPPO: Reading from the deposition of Mr. Greg at page 29, line 6:

"Q Do you know if this shipment was surveyed before it went on board the POLARLAND or during the loading operation?

"A I believe we have a survey report, yes. We have a survey report from Ralph Peachman, marine surveyor.

"MR. CORWIN: Could we mark this please as Exhibit 24."

And I would like to offer this document as Seven Seas Exhibit H.

B16 MR. CORWIN: I am going to have to object to this, your Honor, on the grounds that the gentlemen who completed this report is not here. It's hearsay. I see no grounds for letting it in.

THE COURT: Wasn't his deposition read?

MR. SANFILIPPO: Quite at length, your Honor. These documents that Mr. Corwin had marked for identification were admitted by the Court as business records received by Mr. Greg.

THE COURT: I daresay weren't they received under 1732 Title 28?

MR. CORWIN: Your Honor, this is not one of those records. Each one of the documents admitted into evidence Mr. Greg was asked individually about, each invoice and letter, as to whether they were records kept in the regular course of the business. This is a survey report.

MR. SANFILIPPO: Which they have received in the regular course of business. They had the survey performed.

THE COURT: That is your statement. If it was received it's one thing. Is there anything in evidence to show that it's a record kept in the regular and usual course of business?

MR. SANFILIPPO: It's in the latter part of Mr. Greg's deposition that Mr. Corwin asked those questions and he referring to all of the documents that were marked for identification. To find that particular spot may be a little difficult at this moment but it is there. That is the basis upon which the Court allowed all the other exhibits to go in, as documents received in the usual course of business.

MR. CORWIN: I don't believe that is the basis upon which the other documents were received. Each one was discussed separately.

THE COURT: Mr. Sanfilippo says yes and you say no. He says it will take a little while to find it.

Suppose we take the luncheon recess to find it and we will take it up after lunch.

2:00 p.m., gentlemen.

(Luncheon recess.)

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AFTERNOON SESSION

2:00 p.m.

THE COURT: Proceed, please.

MR. SANFILIPPO: If your Honor please, on page 34 or Mr. Greg's testimony Mr. Corwin is asking questions regarding the various documents and at line 9 the following takes place:

"Q And this survey by Mr. Peachman was done on your corporation's behalf?

"A Yes, sir.

"Q At your request?

"A Yes, sir.

"Q I say "your", I mean your corporation.

"A Yes, sir."

That, sir, is part of the entire evidence introduced by Mr. Corwin to establish that these documents were documents received by Mr. Greg in the usual course of their business and maintained for that purpose. This was a survey requested for by Seven Seas and certainly it would be a proper document for them to receive to carry on their business.

MR. CORWIN: Your Honor, I don't believe those questions in and of themselves are sufficient to qualify it under the rule. The document is not referred to in the question. The words are "And this survey by Mr. Peachman was done on your corporation's behalf".

A survey is not a survey report. There are no questions as there are above dealing with records. He wasn't asked if it's a record in the regular course of business.

MR. SANFILIPPO: Your HOnor, when this document was first introduced, I forget what page it is on now, but I read that portion of the testimony which referred to Mr. Peachman's report of survey. There was an actual question asked "Was this steel survey prior to loading", and the answer was yes and it was Mr. Peachman who did it and it was his report marked for identification.

THE COURT: Where is Mr. Greg's testimony? Parts of it were read into the record.

MR. CORWIN: Page 29, I believe.

THE COURT: I mean in the trial transcript.

MR. CORWIN: The section on page 29 of his deposition had not been read into the record before, your Honor.

MR. SANFILIPPO: That is true.

THE COURT: The minutes I have at page 172 at the top refers to Greg but I don't see --

MR. GOODENOUGH: It begins at page 174, your Honor.

MR. SANFAILIPPO: 174 is where Mr. Greg's

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begins.

THE COURT: Yes, but he is an employee of the Great Lakes International Corporation.

MR. SANFILIPPO: That is correct.

THE COURT: He is not an employee of the Seven Seas Shipping Corporation.

MR. SANFILIPPO: No, he is not. But the document that is produced was the document taken out of their files.

THE COURT: Out of whose files?

MR. SANFILIPPO: Great Lakes Stevedoring. They sought the pre-loading survey. They sought that.

THE COURT: But Great Lakes is not a party to this case and there is no proof that this record was kept by Seven Seas Corporation in the regular and usual course of its business.

MR. SANFILIPPO: It's true it was not kept by Seven Seas.

THE COURT: Nor is there any testimony as far as Great Lakes is concerned. This is typical of what has happened in this case. If it's important I am going to keep the case open and allow you to bring him in. But there are more problems of this kind in this case than I have seen in any case I have ever tried.

MR. SANFILIPPO: I submit, your Honor, with all

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due respect, that this is the same type --

THE COURT: No, there is nothing to establish that this is a document kept in the regular and usual course of business and was made in the regular and usual course of business. In order to qualify under 1732 your opponents raised the technical objection.

Again I say it's typical of what has been going on in this case. It's dragged on tremendously. Either get Mr. Peachman in or establish proof sufficient to permit its admission into evidence.

MR. CORWIN: If I might have a minute to speak to Mr. Filippo.

THE COURT: The conduct on the part of the lawyers during this trial has been outrageous.

MR. SANFILIPPO: Your Honor, rather than prolong matters we would just as soon withdraw that document as a prospective exhibit.

THE COURT: Call the next witness, please.

MR. SANFILIPPO: Mr. Harry Reynolds, please.

HARRY REYNOLDS, called as a witness on behalf of the defendant Seven Seas, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SANFLIPPO:

Q Mr. Reynolds, by whom are you employed?

A Caine Steel Company.

Q How long have you been employed by them?

A Seven years.

Q What is your present position with Caine Steel?

A I am general manager of one of their steel processing centers, steel warehouse.

Q Prior to your employment by Caine Steel by whom were you employed?

A I worked 19 years for U.S. Steel Corporation, actually U.S. Steel Supply, the U.S. Warehouse Division of U.S. Steel Corporation.

Q In the course of your employment by U.S. Steel, what type of steel have you had to do with?

A Well, in U.S. Steel they start you in a training program. So I worked in the blast furnaces and open hearths and open mines and the shippping floor and then I moved to the sales department and that is where I have been. We handled all products at that time, but the last year has been with

Caine in coil products.

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Q What is the business of Caine Steel Company?

A We buy and sell steel coils as is and/or slit.

Q Please describe to the Court what you mean by slitting a coil.

A We buy what we call master coils. You might think 36 inches, 48 inches wide is a master coil and then a customer, for example, Proctor-Silex puts it through automatic stamping machines that might be 3, 4 inches wide. We slit those coils down from the 36, 48 master width down to the slit coil width that our customer requests or requires.

Q In the process of that slitting is there any waste?

A Yes, there is on every coil.

Q What is that waste?

A On every coil you have a trim on the side. If you are doing a good job it might be a quarter. If you are doing a bad job it might be three-eighths or a half.

THE COURT: A quarter of an inch?

THE WITNESS: Right.

Q That is pure waste?

A Yes, on every coil you have trim. That is where you slit it.

Q Would you please identify this document which

Q The bulk shipment of your material would have had an ocean voyage before you received it?

A It would.

Q I am reading from Plaintiff's Exhibit 11, the third from the last page: "Description of the goods: Cold rolled steel sheets in coils. Each coil is first packed in a composite craft paper and in steel sheets of second choice. The steel packing consists as follows: On each side of the coil a crown turned over the inner and outer edges of the coil protecting the windings."

THE COURT: What is Plaintiff's Exhibit 11 that you read from?

MR. SANFILIPPO: The report of survey.

Q Would you say that that was proper wrapping or covering of a coil?

A Yes, it is.

Q In receiving a coil wrapped in the method which the surveyor said the coils in this shipment were received, would the fact that there was outer rust on the covering, would that be of any consequence to you as to the quality of what is inside?

A No, because many of the coils have condensation rust on them.

Q That is rather usual?

A Yes.

Q In the handling of these coils which in this situation are approximately 10-ton each, would you expect certain breaks occurring, say, in the cover?

A Yes.

Q Would you expect certain breaking of bands?

A Yes.

Q Does the fact that a band is broken or two bands are broken, that that in and of itself determines whether or not there is damage to that coil?

A No.

Q Does the fact that there is a break in the covering and that there are portions of the coil exposed, say, in the inches, 2, 3, 4, 5 inches of it and that the inner material is rust-coated, is that any significant value-wise for that coil?

A Not in itself unless it's been so long that they are pitted.

Q So that unless a rust description is placed on any of these documents, unless such a description shows it's pitted there is no damage to the metal itself?

A No, because in practice we take off the tin cans and then very often we take off the OD anyway.

THE COURT: What is the OD?

THE WITNESS: The outside diameter, circumference, is what it's called. We call them OD and ID.

Q That would be a complete winding of the coil?

A Or two or three. It's a small percentage of a total coil.

Q Would the same apply to the inside diameter of the coil?

A Yes, they would cut that off before it went to a customer.

Q On the document or the Paxson machine which you have before you there is a portion on which the coil is placed prior to slitting it. Could you point that out, please.

A The coil comes on a crane at this point, put on this coil car and then it wants to be put on this mandrel here. That is a collapsible --

Q On the mandrel, would you put an arrow to it in red ink.

A Yes.

Q Describe that mandrel, please. First of all, what is the purpose of the mandrel?

A The mandrel will be collapsed for the coil car to put the coil onto the mandrel or uncoiler in the simple terms of the slitter.

Q That requires, does it not, a certain ID of the coil in order to be placed into that mandrel?

A Right.

Q How small an ID would a coil normally have to have on a 10-ton coil placed on your machine? How much of an ID would you have to have?

A Most of our coils come in 20 or 24-inch ID, whether it's domestic or foreign mills. If we have two or three inches we can still get them on.

Q What is the critical point below which you normally would not go?

A Between 17 and 18 inches.

Q So that if a coil had an ID of above 18 inches there would be no question of being able to put it on the machine and slitting?

A Right.

Q I show you a document which has been marked Seven Seas Exhibit M for Identification and ask you if you can tell us what that diagram represents?

A Well, that shows a continuous hot dip galvanizing and/or paint coating lines.

MR. SANFILIPPO: Your Honor, this gentleman is not a ~~gentleman~~ expert on galvanizing. We are offering this for two purposes. One is to demonstrate to the Court the nature of the process. It's a long cutting process for the galvandeformed a bit but being able to place it on the mandrel, would it come out in the end result as a perfect coil in the sense that it is perfectly coiled without any deviations and breaks or anything of that sort?

A The mills have expanding mandrels, as we do, so a slight ovalization they would take out with the power of their payoff. Once they did that then the material would be all right to go through the line.

Q The end result would be a uniform coil?

A Right.

MR. SANFILIPPO: I would like to mark this in evidence, your Honor.

MR. GOODENOUGH: No objection.

MR. CORWIN: No objection.

(Defendant Seven Seas Exhibit M received in Evidence.)

Q You have heard discussion about ovalized coils, out-of-round, pear shaped and other descriptions of coils that are not perfectly round, have you not?

A Yes.

Q Does the fact that you have an ovalized coil below the 18-inch ID, is that fatal to the coil?

A No.

Q Would you tell the Court why it is not?

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A There are people right in my area of Philadelphia, I would say at least four of them, that come out with a jack and pump up the coil and return it to round. They do it for a penny a pound and they guaranty they will go anywhere in the country and do this work and when they are through -- I would say in my case it's been dozens and dozens of coils we have had no problems with the coils using them for slit material.

Q Would that expertise be found only in the United States or could you go to Europe?

A That is pretty simple. I think it would be anywhere in the world.

Q I show you a document which I have marked Seven Seas Defendant Exhibit K and I ask you if you would tell the Court what that represents?

A This is an ad which we received from Eastern Roll Forming with a picture at the bottom of egg-shaped or coils out-of-round and they are showing those coils as an example of what they can do to put them back in normal condition.

Q At one penny a pound?

A I don't know their price. The penny a pound is the gentleman I deal with.

Q I show you a document marked Seven Seas Exhibit L and is that the outfit that you deal with that will do it for the survey report, Exhibit 11, at page 16, 23 and 36 the inside diameter of the coils which the surveyor has deemed had to be sold on an as is, where is basis. They are in millimeters.

I hve converted them to inches. I am quite certain of my conversion figures, sir, but they are subject to check, of course. I would like to mark this into evidence, one of the purposes being to show that out of those coils most of them could have been salvaged and that rather than sell them at the price they did they could have spent a penny a pound on them which would be $2 hundred and they could have salvaged that entire coil.

It's merely so that I can read the Arabic numerals that I have made this conversion.

THE COURT: Of course, the claimed damage was disclosed in Antwerp, Belgium. Does this witness' testimony apply to conditions there?

MR. SANFILIPPO: This witness has stated that there is no reason why this technique or expertise shouldn't be known in Belgium.

THE COURT: Was it know in Belgium?

MR. SANFILIPPO: There is no testimony to the contrary.

MR. GOODENOUGH: Yes, there is. Mr. Franquet was cross examined by Mr. Sanflippo and was shown the brochure identified as the Paxson brochure.

MR. SANFILIPPO: And the man was fast to say that he was not a technical man. He does not know and, consequently, could not state yes or no to my question.

MR. GOODENOUGH: But he did say that we do not have a certain part of the machine described on the Paxson brochure. In other words, they were not equipped to perform this function as outlined in the brochure.

THE COURT: I am simply posing the question to you.

MR. SANFILIPPO: I realize that difficulty.

THE COURT: I don't hesitate to take this witness' testimony about conditions in the United States, but the out turn is the place of Antwerp, Belgium.

MR. SANFILIPPO: This D&B outfit, he has stated, will travel all over the world.

THE COURT: He is not the D&B outfit and he is not presuming to speak for them, are you, Mr. Witness?

THE WITNESS: No, sir.

MR. SANFILIPPO: He was prompt in stating that this knowledge is available in Europe. It's part of the entire processing of steel.

THE COURT: Have you been to Antwerp?

THE WITNESS: I have not been to Antwerp.

MR. SANFILIPPO: May I have this marked?

MR. GOODENOUGH: Plaintiff has no objection subject to mathematical verification.

MR. CORWIN: I have no objection. I think these figures are to represent figures in the survey report and insofar as they do that is fine.

xx (Defendant Seven Seas Exhibit J received in Evidence.)

THE COURT: These are with respect to the 16 coils.

MR. SANFILIPPO: Yes, the 16 coils.

Q I show you this computation of 16 coils, Mr. Reynolds, of which we just discussed with the Court and I ask you to tell the Court which of those coils could not be used on a Paxson slitter, for instance, without having them pressed out by someone like D&B or someone else who has that knowledge.

A One is 1.788, so that is definitely a worry.

B19 MR. CORWIN: Are there coil numbers on that sheet?

THE WITNESS: I can give you the page and then the number down. For example, page 16 the smallest part of the hole of the coil, the ID of the coil is 21.6 so there is no problem at all. I stated 17 to 18 inches before on my type of typical processing equipment.

it would be the same. It would be the damaged outer wrap or the inner wrap or whether salt contaminated or not. If it doesn't get to the inside that is not the problem.

Q At page 16, 3909-16. Packing buckled and out of line in the core. Packing buckled and torn on inner edge. Holed 2 by 2 inches, exposed contents partly rust-stained and chafed.

Would that coil be damaged so as to lose its value?

A In our case we could use it.

MR. GOODENOUGH: I don't believe you responded entirely to the question. The question posed was: Was that coil damaged. The witness said, "we could use it."

THE COURT: You mean it could be used after processing?

THE WITNESS: Right.

THE COURT: Putting it through this process you referred to before?

THE WITNESS: Yes, sir.

THE COURT: But not in the same condition?

THE WITNESS: We wouldn't do anything else to it but put it on the slitter and let it run and cut the outer wrap and the inner wrap when you get to it you put it over and cut it off. That is normal with imported steel.

Q There is no need to change the condition, you use it in its then present condition?

A Right.

Q Page 34, 3909-6, this is one of the coils, ovalized coils.

MR. CORWIN: I am lost as to the page.

MR. SANFILIPPO: Let's forget that one bacause we know it's ovalized.

Page 27, 3911, 3910-11, evidence of salt contamination on the packing. Circumference envelope torn and holed 10 inches by 6 inches and 5 inches by 3 inches. Exposed layer partly rust-stained and scratched on edge. On one side packing torn and holed 3 inches by 3 inches at the inner edge. Contents exposed. On the outer side packing buckled at inner edge.

With regard to that coil, would that be damaged so as to have lost value?

A I wouldn't say so, no, sir. Many of them come that way.

THE COURT: In its then condition would you consider it damaged?

THE WITNESS: As stated there --

THE COURT: Without putting it through the slitter.

THE WITNESS: There is something that the surveyor has seen but it doesn't destroy the use of it to us because of the trim on the sides and the outer wrap and the ID wrap being destroyed anyway.

THE COURT: You have to put it through this pressing process?

THE WITNESS: Through a slitter. That is just one of many slitter makers.

THE COURT: In its then condition would you consider it damaged?

THE WITNESS: That would clear it up in most cases. I didn't see the coils. I am not the surveyor. I am going by what he is reading, of course.

B20 Q Rather than go through any more, I don't know if they are representative of all of them or not, this is at random.

Have you examined this Exhibit 11?

A Most of it, yes.

Q In any portion of this report do you find that the surveyor opened opened any of the coils or at least uncovered them to examine them?

A Not that I could see.

Q You are accustomed to making insurance claims also on your imports, are you not?

A I am.

Q On coils which are received in the conditions that

I have read to you would you make any claims against your ~~insurance~~ underwriter~~.~~ ~~your~~ cargo underwriter ~~rather~~?

A You would take note of damage. I don't, no, the people in the plant do. They take notes of damage. But if there is rust on the edges, rust on the inner lap, rust on the outer lap it has no effect on the coil.

Q Assuming that the wrapper is all torn and pulled over.

A That happens an awful lot. When they take them out of a ship's hold they have a cable and they will have three or four coils sitting like this and when those come down and hit they can break strapping, they can break circumference, or tin coil we call it, or the wrapper. Sometimes just touching very easily, they are very careful and the man is way up when he does it so it's easy to have them hit.

THE COURT: Supposing there is ovalization as to the tons used here, would you make a claim in that instance?

THE WITNESS: Yes.

Q For how much?

A For the penny a pound because they can be repaired.

THE COURT: And if there were deformity would you make a claim?

THE WITNESS: I agree with the captain on that. On a pear shaped, any time you have an arc left they can solve the problem. This is like a jack in your car that has shoes up from it and they apply pressure and push this coil back so it has a good ID. If you have it like this they can't put the shoe up.

They would say they could but I would be very skeptical of that, the top of the pear. But if there is an arc they lean up beautifully.

THE COURT: In the claim of deformity, you would make a claim?

THE WITNESS: I would.

Q By deformity you would refer to the pear shaped coils, those in which they is crimping and pleating over?

A Those I couldn't get on my slitter. The 15.7, 7.88, that type of thing would have to be jacked up, pumped up.

Q Those coils which are permanently deformed would also have a claim for those, wouldn't you?

A In most cases the man would try with his expander on them and it's amazing what they can do.

Q In examining this Plaintiff's Exhibit 11 you also note the measure of damage that these surveyors have awarded. Did you form any opinion as to what claim, what percentage of claim you personally would make if you received goods with this damage? Answer yes or no. Have you formed an opinion?

A Have I formed an opinion, yes.

Q What is that opinion?

A It would be less than 5 percent.

THE COURT Five percent of what?

THE WITNESS: Of the ovalized coils.

THE COURT: Can you figure out in dollars what that would come to?

THE WITNESS: No, I can't offhand. Do you know the weights of the 16 coils and the price?

MR. SANFILIPPO: I know the weights. The weights can be determined from the report of survey.

THE COURT: All right.

MR. SANFILIPPO: Thank you.

MR. CORWIN: I wanted to ask Mr. Sanfilippo on one exhibit marked as the Paxson exhibit, is that the same exhibit marked on the occasion in Antwerp? I think that should be brought out. I believe that was marked as Defendant Seven Seas E at Mr. Franquet's deposition. I think now it's in evidence as Seven Seas I. It's the same exhibit.

THE COURT: All right, proceed, please.

CROSS-EXAMINATION

BY MR. GOODENOUGH:

Q Mr. Reynolds, did you see the cargo in question in this suit?

A I did not.

Q The equipment that you referred to, you have that in your plant in Caine Steel?

A Yes.

Q You have that equipment?

A Yes.

Q I assume that the equipment is necessary then in order to straighten out these highly ovalized coils?

A That is not the purpose of the equipment.

Q That is not the purpose of the equipment?

A No. The purpose of a collapsible mandrel is to get it into the smallest hole possible that the mills produce. Then as you expand it and the coil is pulled through by the recoiler the fact that you have power at this end is back pressure and it helps to make the material go through the slitter knives evenly.

Q Is this machine, this mandrel, of rather recent origin?

A No.

Q How old is it?

A Mine?

Q Yes.

A Mine is probably 20 years old.

Q Do you know if that equipment is available in Europe?

A Slitting equipment?

Q Yes.

A I would certainly believe it was.

Q And the mandrel?

A Expandable mandrel?

Q Yes.

A Yes.

Q Do you know if it's available at Antwerp?

A Not specifically. I have never been to Europe myself. They have automobiles, they have appliances, they have equipment like that so they would have to be able to slit coils.

Q Are there other methods of slitting coils?

A Not that I know of. There is sheeting of coils and blanking from that sheeting but most people prefer to work with slit coil now because you set up an automatic machine and it keeps pumping along and keeps pulling off the coil.

Q You used the term now. Is that now 1976, 1975?

A I would say the last six, eight years they are doing more and more of it.

Q But it's in the United States?

A Yes.

Q Supposing the coil itself is creased, will that not effect its utility?

A The crease is the question we came to before with Capt. Wheeler. That is the top of the pear and that is a question you really would have to look at. I would think it's creased at the top of the pear but, again, I am not sure unless you undress the coil.

However, I did disagree with the other witness. If the outside wrap and inside wrap are tight on the coil and it's oval shaped you can see what the problem is with the oval. You don't need to take it off. It's still going to be this, the inner material. It's like a stocking over your leg, the contour of our leg. The wrapping is the contour.

If you have this, whether the wrapper is on or off, that is going to be the contour, the egg-shaped, the ovalization, the out-of-round.

Q Mr. Reynolds, this is a hypothetical, suppose the cold roll steel coils were to be used for automobiles, if the coils themselves had damage at the ends, were ovalized, were torn, would that not impair its utility for the purpose intended?

B21 MR. SANFILIPPO: Your Honor, may I object to the form of the question. There is no evidence in this case that there was a torn coil. There are torn wrappers but no torn coils.

MR. GOODENOUGH: I will withdraw the question, your Honor.

Q Mr. Reynolds, if the coil is described as chafed on edge, would that indicate to you that the coil would have some diminution in value because of the chafing on the edge?

A It depends on the degree of the chafing. If it's within the trim of the slitter it's no problem.

Q Then it would be up to the individual surveyor who personally viewed the coils to make a determination on the scene as to the degree of damage occasioned to the coil, would it not?

A It would.

Q Your opinion, therefore, of 5 percent damage, that referred to the ovalized coils?

A Yes, sir.

Q It did not refer to the 182 coils which are claimed as mechanically damaged?

A No.

Q And your opinion as to the 5 percent diminution in value of the ovalized coils is dependent upon the availability of the machinery necessary to jack them up, put them on a special type mandrel?

A The one cent a pound.

Q And if that equipment is not available then does that not change your opinion as to the extent of damage?

A I can't believe that this isn't available. It probably wouldn't cost over $60 and there are ovalized coils, I would think, in every port in the world.

I can't believe they dump every worn where is, as is, and we are the smartest people and we have four, five in the major places down the East Coast which is my experience here.

Q They have them today, sir, is that correct, 1976?

A We have had them for seven years that I know of.

Q In the United States?

A Yes.

Q But you do not know if they were available at Antwerp?

A I do not.

THE COURT: What is your definition of ovalization?

THE WITNESS: Out-of-round. In other words, when they come out of the steel mills they are perfect, the OD is nice and round and the ID is nice and round. But because of stretchers, compression, this happens.

But as long as it doesn't go too far the elasticity is still in the steel so when they pump this back with the shoes with equal pressure in three directions they return and they are fine. I don't mean for just one particular use, THE WITNESS: You couldn't put it on the mandrel. It would be like this and you couldn't go into it.

MR. CORWIN: He did refer to this top one, if I am correct, as being the type that would not fit on a mandrel. It's likely that one would not fit on the mandrel, the top photograph on page 2.

THE COURT: How many would you say would not fit in from those you observed on those pictures?

THE WITNESS: I think there are 4 pictures but I have the feeling there is duplication on the pictures.

Q On the basis of the measurements you looked at you thought there were 2 or 3?

A Yes.

THE COURT: Mr. Reynolds, if you don't mind an interruption, you have been testifying, of course, from these pictures that were shown to you but were taken at the out turn of the different coils and also from the surveyor's report and you were giving your opinion based on that.

THE WITNESS: Yes, sir.

THE COURT: I take it you would agree you would have a much better judgment if you had actually seen the coils at the time?

THE WITNESS: I would. But I have seen dozens and dozens of surveyors' reports and I have taken my own pictures when we have problems. I have just seen these pictures today for the first time.

THE COURT: You would rather rely on your own visual judgment, I take it, as against the surveyor's report?

THE WITNESS: I would, sure.

Q Based upon your experience as having seen coils, and I believe you said you have reviewed survey reports and you have reviewed photographs and have compared them with survey reports that you have seen, can you make a fairly good judgment from looking at this in your experience as to how many of these coils in the photographs would require this jacking as opposed to the no jacking being needed?

A I am not sure you have pictures of all the 16 that were on the yellow sheet we looked at before. Those that I am saying that I see here, and I haven't looked at all the pictures even, but here is one that we could fit on the slitter, I would guess, by looking at it.

THE COURT: Which one?

THE WITNESS: This one is ovalized. I would think I can get it on the slitter. This one I wouldn't.

THE COURT: The one you say no, you couldn't get on the slitter, what, if anything, could you do with that in order to make it merchandisable, if anything? Could you do anything with it?

THE WITNESS: Those people, Eastern Roll Farming, D&B, or Expansion Incorporated would take a run at them.

THE COURT: They would try their hand at it?

THE WITNESS: They would try.

THE COURT: You are not sure they would succeed?

THE WITNESS: No.

THE COURT: In fact, in one of the exhibits there one of the companies you referred to indicated that if they failed they would make no charge?

THE WITNESS: Right.

THE COURT: Which would indicate there are instances where they do not succeed.

THE WITNESS: Right.

Q Mr. Reynolds, going back to the photographs, looking at the top photograph on page 1, do you see any coil in there that looks as if it would be any problem to you in terms of putting it on a mandrel?

A That is a normal shipment. If I were to take a shipment in my plant this afternoon it would look like that.

Q What about the coils depicted on the second photograph?

A The same.

Q What about the coils in the third photograph?

A I would say from this that these wrappers are just

A I don't.

Q The right-hand photo in the middle of the page, No.3, would you say that is the same, that is depicts the same coils, as depicted in the middle of page 2?

A I would.

Q So what holds true with that coil is also going to be the same for the page 3 photograph?

A Yes.

Q The left-hand photo on page 3, what is your opinion with regard to the coils depicted there? I think there are really only two that you can see.

A Yes, that looks like just wrapper damage from what I can see from here.

Q The bottom photograph on page 3, does that appear to be the same coil as is depicted on the bottom of page 2 and the bottom of page 1? Take a closer look.

A Yes.

Q It seems to have the same tape?

A Yes.

Q Again that is the same coil?

A A duplication, right.

MR. GOODENOUGH: I would except to this procedure of analyzing the photographs and picking out what appear to the witness to be duplications. The gentleman who took the photographs was present in the court, available during cross-examination, and at that time he could have and he should have been queried concerning any possible duplications. That was we would know firsthand what coils were double photographed, so to speak. This is all conjecture.

THE COURT: I will take it for whatever value it has.

Q Going to the photograph at the top of page 4 --

A No problem.

Q No problem with those?

A No.

Q Again the left-hand photograph in the middle of page 4, does that appear to be a coil that has already been photographed?

A It isn't that one.

THE COURT: I didn't hear the witness' answer.

MR. CORWIN: He said it isn't that one, appearing on page 3.

THE WITNESS: It isn't the one with the stripe on it --

THE COURT: These coils are pretty much set up in the same way, aren't they, as far as the wrapping is concerned?

THE WITNESS: Here they have tried to repair them,

jqds

many, taking all the coils together, how many out of those do you believe would have required this jacking that you discussed?

A I would say a couple.

Q Two or three?

A Yes.

Q Those are the ones that seemed to be repeated again and again, is that correct?

A Yes.

Q As for the remainder of the ones depicted in the photographs you see no problem of using those in the ordinary course in any process that is used in any mill, is that right?

A Any process in any mill --

Q I am sorry. With the normal type of mandrel machine that you would expect a mill or a steel processor, anyone using coils, the remainder of the coils would be able to be used in your opinion?

A Yes.

Q In the normal course?

A Right.

Q The damage or the damage to the packing that we see in these photographs and the type of damage that Mr. Sanfilippo discussed in several of the capsulizations concerning descriptions of different coils, is that, in your opinion, all handling damage that occurs when coils are lifted up by the stevedore, put down with cables through them, in other words, handling damage is what I am saying?

A Handling between the dock and the ship and the ship and the dock again?

Q Right. Isn't it a possibility that handling damage can occur between the mill and placing them into railroad cars?

A I haven't had that problem.

Q Is it a possibility that handling damage can occur when coils are taken off railroad cars and put into a terminal, lifting them off, whether they use derricks, or whatever?

A Yes.

Q And there is a possiblity of handling damage when they are lifted up out of the old of the ship, is that correct?

A Right.

Q Is there a possibility of handling damage when using fork lift trucks inside the old of a ship?

A There is.

Q Bands can be broken?

A Right.

THE COURT: Is there a possibility of damage by reason of stowage during the course of the voyage?

THE WITNESS: Yes. As the captain mentioned, they are three-high and I have seen them higher than three. If you have smaller coils, lighter weight coils with heavy ones on top you are going to have damage to the bottom ones.

It depends on how rough the crossing is too, how hard they are pushed.

THE COURT: Any other questions of the witness?

CROSS-EXAMINATION

BY MR. GOODENOUGH:

Q Woudl the configuration of the ship also have something to do with the damage that coils could receive during an ocean voyage?

MR. CORWIN: I am going to object to this. I am not sure this witness is qualified --

THE COURT: He may answer.

THE WITNESS: All I have seen is some of them taken out of the ship. I don't spend my time at the docks.

Q You have seen them taken out of the ship?

A Yes.

Q Have you seen them on the ships?

A Yes.

Q Have you noticed the coils that were in the extreme ends of the ship, close to the skin of the ship?

A Yes.

Q Does the configuration of the ship have anything to do with the out turn appearance of the coils?

A Not that I know of really.

Q With regard to the ovalized coils, Mr. Corwin asked you a question that he immediately retracted concerning the suitability of the coils for all purposes. Would you mind completing that answer for me?

MR. CORWIN: I don't think the question was completed.

THE COURT: Put your own question.

B24 Q Mr. Reynolds, I direct your attention to the 16 ovalized coils and the photographs that you have just viewed, Exhibit 12.

In your opinion, would those coils be suitable for all purposes?

MR. CORWIN: Your Honor, I object to that. I think the witness has differentiated between two or three of the coils depicted in the photographs and the remaining coils as did Capt. Wheeler. I think a question of this type should differentiate between those two or three.

THE COURT: I will allow the question. If the witness can't answer it he can state so.

A Would you repeat the question.

(Question read.)

A That I know of, yes.

MR. CORWIN: I again object to the question. I still have a problem with the ordinary ovalized. Mr. Goodenough says ovalized and taking that as a fact as being the coils depicted in the photograph.

THE COURT: The witness answered the question.

MR. GOODENOUGH: No further questions.

MR. SANFILIPPO: No further questions.

THE COURT: You are excused.

(Witness excused.)

MR. SANFILIPPO: Mr. Jones.

DAVY JONES, called as a witness on behalf of the defendant Seven Seas, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SANFILIPPO:

Q By whom are you employed?

A Seven Seas Shipping Corporation.

Q How long have you been employed by them?

A Eight years.

Q In what capacity are you employed?

A President.

Q Have you been president for eight years?

A About 6-1/2, I guess.

Q Could you give us a brief resume as to the contractual relationship of the POLARLAND, that is its owners, charters, charterers.

Can you start off with who was the owner of the POLARLAND in 1970?

MR. CORWIN: I am not sure this witness is qualified to answer some of these questions.

THE COURT: Don't you have documentary material on this?

MR. SANFILIPPO: Yes, sir. But the Court was somewhat confused before as to the different parties in the matter --

THE COURT: I wasn't confused.

MR. SANFILIPPO: You asked questions --

THE COURT: I asked questions about it to make sure I had it right.

MR. SANFILIPPO: That story is not complete, sir.

THE COURT: What is this witness going to testify to, oral conversations?

MR. SANFILIPPO: He will know under what sort of arrangement --

THE COURT: You have documents in evidence.

MR. SANFILIPPO: There is no document in evidence that this vessel is being operated by the owner of the ship under a management contract. I would like to put that in.

THE COURT: Go ahead. If you want to offer evidence through this witness I will take whatever it is you offer provided that it's relevant and admissible.

Q Who was the owner of the POLARLAND?

A The Vestland Company, referred to as Rich Amlie & Company of Haugesund, Norway.

MR. CORWIN: I don't understand his answer. He gave the name of two different companies.

A The Vestland Corporation or Company of Haugesund, Norway, which we normally refer to as Richard Amlie Company.

THE COURT: Don't we have pleadings here where these matters are admitted?

MR. CORWIN: We admitted that, your Honor.

THE COURT: I don't understand you, Mr. Sanfilippo. Where are the pleadings here? Let me have them. I should have had a marked copy.

Is there any issue in this case that Vestland was an owner of the vessel?

MR. SANFILIPPO: None at all.

MR. CORWIN: The third paragraph of the answer admits that Vestland owned the SS POLARLAND and Rich Amlie Co.

managed the POLARLAND and I can go on.

THE COURT: Go ahead.

Q In conjunction with the bareboad charter to Molena Trust was there a management contract?

A Yes, there was.

Q Under the terms of that management contract --

THE COURT: The management contract between whom?

MR. SANFILIPPO: I am trying to get it in, sir.

Q Was the management contract also between Vestland and Molena Trust?

A Yes, it was.

Q Under that management contract what did Vestland undertake to do?

MR. CORWIN: I object.

THE COURT: I don't understand this. Is he an officer or director of either Vestland or Molena?

MR. SANFILIPPO: He can answer that for you, sir.

THE COURT: Were you an officer of either of these corporations?

THE WITNESS: What we failed to do is establish my identity also related with Molena Trust Incorporated.

THE COURT: What is his relationship to Molena Trust?

THE WITNESS: Seven Seas Shipping Corporation, sir, is the acting agent for Molena Trust Incorporated in all respects to shipping.

THE COURT: Go ahead.

Q Who engaged the crew that was on the POLARLAND?

A Rich Amlie.

Q And who engaged the Master?

MR. CORWIN: Your Honor, I don't know what qualifications he has to discuss about Rich Amlie. He talked about Molena Trust. Rich Amlie is no longer in this suit. I don't see what bearing it has on the issues in this suit.

MR. SANFILLIPO: It has a great deal of bearing who was on the vessel, who controls it, who manages, who handles it. The entire vessel was handled by Rich Amlie under a management agreement which I will put in evidence.

THE COURT: Isn't the charter party that was entered into berween Ferrostahl and Seven Seas in evidence?

MR. SANFILIPPO: Yes, sir.

THE COURT: And what does that establish?

MR. SANFILIPPO: That is the third step in the chain --

THE COURT: What are you trying to show? Are you trying to bury that charter party?

MR. SANFILIPPO: I am trying to show that this vessel was managed by a crew appointed by Vestland, the defendant here.

MR. CORWIN: Your Honor, his witness just said that it was Rich Amlie that hired the crew.

Q Can you distinguish between Rich Amlie and Vestland?

A To me they are one and the same doing business as Rich Amlie Corporation.

MR. CORWIN: I believe this is all irrelevant.

THE COURT: I will take it since I am sitting without a jury but I must say, Mr. Sanfilippo, I don't understand in the light of these documents what you are trying to prove now. It seems to me that there is an attempt to bury the documents that are in evidence but I will take it.

MR. SANFILIPPO: Sir --

THE COURT: Don't argue, go ahead. Documents really have no meaning then.

MR. SANFILIPPO: All the documents should be put in, sir.

Q I show you a document and I would have you explain to the Court what that document is.

THE COURT: The document will speak for itself if it's admissible.

MR. SANFILIPPO: I would like to offer this in evidence.

MR. CORWIN: I have to object to this, your Honor.

MR. SANFILIPPO: I haven't offered it yet.

MR. CORWIN: I am sorry.

Q Capt. Jones, did you, on behalf of Molena Trust, negotiate a management contract with Vestland, AS Vestland, for the management of the POLARLAND while under bareboad charter to Molena Trust?

A The bareboat charter and the management contract were both negotiated simultaneously. One was contingent upon the other, yes, sir.

Q Is this document which I have marked as Exhibit W, Seven Seas W, is that the management contract that you speak of?

A Yes, it is.

Q And this document -- may I have the bareboat charter, please.

THE COURT: Under the rules, gentlemen, I should have had a copy of the answer of both Vestland and Seven Seas.

Where are those answers?

MR. SANFILIPPO: Those answers are on file, sir.

THE COURT: They should have been supplied to the Court under the local rules.

MR. GOODENOUGH: They were, your Honor.

THE COURT: I don't have them here. There should have been marked pleadings submitted.

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MR. GOODENOUGH: The plaintiff submitted those in duplicate originals, your Honor.

B25

Q I show you POLARLAND Exhibit O. Is that the bareboat charter that you speak of that was negotiated and executed simultaneously with Seven Seas Exhibit W for Identification?

A Yes, it is.

MR. SANFILIPPO: I would like to offer Exhibit W in evidence, sir.

MR. CORWIN: I object, your Honor, to the admission of this.

MR. GOODENOUGH: Plaintiff objects too, your Honor.

MR. SANFILIPPO: Counsel state no reasons for the objections, your Honor.

THE COURT: This is an agreement between Molena Trust and Vestland, is that right?

MR. SANFILIPPO: Yes, sir.

THE COURT: What is its pertinence or relevancy as far as the issues in this case are concerned?

MR. SANFILIPPO: That the vessel was manned by Vestland people under their command under this agreement. Basically when there is a bareboat charter it's the charterer who has possession of the vessel. In this situation it was not that way. It was a bareboat charter but they entered into this management agreement so that Vestland could continue operating the vessel.

THE COURT: How would that effect the rights of Nimpex, the insurance company as the subrogee now?

MR. SANFILIPPO: It might effect the rights as between the various charterers.

THE COURT: I will receive it only as between the issues that exist between Vestland and Seven Seas Shipping Corporation.

MR. CORWIN: Your Honor, I note that the document is not signed by anybody except for the one party.

THE COURT: I hadn't noticed that. This isn't an executed agreement.

Q Was that agreement executed?

A Yes, it was, your Honor. That was taken out of my files and the others are at the head office.

THE COURT: I am not going to take it that way. Again, this is typical of everything that has gone on in this case. The objection is sustained. It's not a completed document.

Q Captain, you negotiated a time charter with Ferrostahl, did you not?

A Yes, sir, I did.

Q And you signed the agreement that has been marked in evidence here as POLARLAND Exhibit P?

A Yes, sir, I did.

Q I show you Plaintiff's Exhibit 13 and ask if you negotiated this charter party also?

A Yes, one was contingent upon the other. Without one we would not have had the other.

Q They were executed at the same time and place?

A Actually we negotiated the Exhibit 13 or the freight contract first because I wasn't going to commit myself without having some way of carrying Nimpex' cargo on other ships.

Q Would you explain that, please.

A Seven Seas had told Nimpex at the time we were the charters of the POLARLAND -- the NUVVIV and the ATTERMINA-- that we might be chartering these ships out. We had a chance with Molena Trust to improve the charter hire and that if I was successful in chartering them out for Molena Trust we would mutually cancel the contract between Seven Seas and Molena Trust as the charterers and put them over here but --

Q By put them over here --

A Putting them over to a new charterer.

Q That was Ferrostahl?

A Ferrostahl. I would take back a freight agreement wherein I knew I would be protected so that I would have the space when Nimpex needed to move their cargo. I would have somebody who would be willing to take it and I could be free of any time charters then after that.

Q As a result of that did you and Ferrostahl come to an agreement as to who was to carry the Nimpex cargo?

A Yes, we outlined in the new contract here, freight agreement, that he would give me certain ships to carry cargo out of the Lakes and also that we would have additional cargo which throughout the year he would offer us ships and we would accept or decline -- excuse me, but I have something in my eye.

We would accept or decline as the business progressed through the summer, depending on Nimpex' cargo, the availability of them.

Q Under the time charter party to Ferrostahl who had assumed the expense and risk for the loading, stowing and discharging?

THE COURT: Doesn't the agreement speak for itself?

MR. SANFILIPPO: Yes, it does.

Q Let me put it this way: The agreement has a provision whereby the charterer Ferrostahl, assumes the risk of loading and stowing and discharging --

MR. GOODENOUGH: Objection. Perhaps counsel can point to the section of the agreement and ask the witness to read it.

Q Paragraph 8, sir --

MR. CORWIN: Could we have the identification by exhibit number please.

Q Exhibit P, paragraph 8, has been construed by our Court and by the Second Circuit --

THE COURT: Just read what it is in there. Nevermind construing now. That is the charter between whom?

MR. SANFILIPPO: Ferrostahl as time charter and Molena Trust.

THE COURT: Molena Trust is the one that had the charter from the original owner?

MR. SANFILIPPO: That is correct.

THE COURT: And this is Molena Trust to Ferrostahl?

MR. SANFILIPPO: That is correct, and this is a time basis rather than a voyage basis.

Clause 8 provides that the captain shall prosecute his voyage with the utmost dispatch and shall render all customary assistance with ship's crew and boat. The captain although appointed by the owner shall be under the orders and direction of the charter as regards employment, agency and charterers are to load, stow, trip and discharge the cargo at their expense. Under the supervision of the captain cargo, who is to sign bills of lading on cargo as presented with conformity, mates or tally clerk receipts.

MR. CORWIN: I believe Mr. Sanflippo misread the latter part of the clause. He said cargo instead of captain.

MR. GOODENOUGH: Under the supervision of the captain.

Who is to sign bills of lading for cargo as presented in conformity with mates or tally clerks receipts.

Q In the charter party or the freight contract entered into by Seven Seas was there a similar assumption of what I have just read to you?

MR. CORWIN: Your Honor --

THE COURT: Objection sustained. The document speaks for itself. It's an exhibit in evidence.

What exhibit number is that?

MR. SANFILIPPO: 13, sir.

THE COURT: Are you referring to the charter party now between Ferrostahl and Seven Seas?

MR. SANFILIPPO: That is correct.

THE COURT: Produce the exhibit and refer to the particular clause that you are interested in.

Q Under Clause 16, the latter portion of Subsection 9 on page 2 of the charter party it states the cargo to be loaded, stowed, lashed and discharged by charterers, stevedores free of expense to the vessel.

THE COURT: Who are the charterers there?

MR. SANFILIPPO: Seven Seas.

THE COURT: Let me see that, please, the whole clause. The clause reads the cargo to be loaded, stowed, lashed and discharged by charterers -- that would be the Seven Seas -- stevedores free of expense to the vessel.

MR. SANFILIPPO: That is right.

Q Did Seven Seas by agent or otherwise actually load this cargo?

A No, it did not.

Q Who loaded the cargo?

A Nimpex loaded it.

MR. GOODENOUGH: I object. Counsel hasn't even asked the witness if he knows who loaded the cargo.

Q Do you know who loaded the cargo, Capt. Jones?

A Yes, I know who loaded the cargo.

Q Was Great Lakes Stevedoring Company the people who loaded the cargo?

A Yes.

Q On whose behalf did they load it?

MR. CORWIN: Objection to the question as leading.

THE COURT: Don't lead the witness, please.

B26 Q On whose behalf did they load the cargo?

A Nimpex International.

Q Who did they charge for the loading?

A Nimpex International.

THE COURT: Wasn't it the obligation of Seven Seas under the charter party just read to load the vessel?

THE WITNESS: Yes, sir, it was but that doesn't mean I can't pass those obligations on to somebody else, sir.

THE COURT: Where is the agreement that you entered into, that is Seven Seas entered into with Nimpex? What does that provide with respect to the loading? Where is that agreement?

MR. SANFILIPPO: I don't think it provides very much, sir, but here is the agreement, Plaintiff's Exhibit 14.

THE COURT: You say there is no provision in there at all about loading?

MR. SANFILIPPO: I don't believe so.

Q Captain, so that we can better understand that fact, what was the relationship between Nimpex and Seven Seas?

A Seven Seas was merely an interhouse working agreement with them wherein we would act as their consultants in regards to how to move their cargo, book it for them, take a profit on so much per ton for doing the work for them.

Q What was Nimpex' business?

A Importing and exporting steel.

Q And then your association with them was to carry this steel or to make arrangements for it?

MR. CORWIN: Leading.

THE COURT: I must say this is leading and really flies in the face of the agreements that are in evidence. Apparently these agreements have no meaning at all as far as you are concerned.

MR. SANFILIPPO: They have meaning, sir. I would like to get that meaning out. That is the difficult part.

THE COURT: These are written agreements, are they not?

MR. SANFILIPPO: Upon reading this agreement together with the other two, I don't think we can make much sense of them unless there is an explanation for them.

THE COURT: Go ahead.

MR. CORWIN: I am not sure if there was an answer to the last question.

THE COURT: I sustained your objection.

Q I show you a document which has been marked as Seven Seas Exhibit N. Can you state what that is?

A Yes, sir, that is the vessel POLARLAND's manifest showing cargos loaded on six bills of lading out of Cleveland, Ohio, destined for Antwerp, Belgium.

Q Whose cargo was on there?

A Nimpex International and Socomet International.

Q Was this the total cargo as far as you know that was on the POLARLAND at the time of its departure in May of 1970?

A Departure from Cleveland?

Q Yes.

A Yes, I think it was.

THE COURT: Was any other cargo on that vessel taken up at any other port?

THE WITNESS: Judge, I am going back 4, 5 years but I recall that I had some additional cargo that I tried to get Mr. Ryan of Ferrostahl to let me load. He had about one thousand tons that he wanted to load up on Buffalo of some lubricating cylinder oil that he needed very badly for his operation.

THE COURT: Who is Mr. Ryan?

THE WITNESS: He represented Ferrostahl. He asked me to hold it back and put it on a later ship and let me have the one thousand tons.

THE COURT: My question was: Was any other cargo on board that vessel during the carriage?

THE WITNESS: Yes, sir.

THE COURT: Of the Nimpex --

THE WITNESS: That is what I am telling you about.

THE COURT: Whose cargo was it?

THE WITNESS: Ferrostahl.

THE COURT: That wasn't Nimpex' cargo?

THE WITNESS: No, sir, it was not.

THE COURT: What was the nature of that cargo?

THE WITNESS: To the best of my recollection, it was cylinder oil in drums which they loaded either in Erie or Buffalo.

THE COURT: Was there any other cargo beyond that?

THE WITNESS: There was some Socomet steel. loaded. We had made arrangements for it, the same kind of arrangements we had with Nimpex in Cleveland that we loaded there.

THE COURT: That was a different shipper than Nimpex?

THE WITNESS: Yes, sir.

THE COURT: What was the name of that shipper?

THE WITNESS: Socomet, better known as Philipp Brothers Steel people. We also loaded what we call top off cargo in the St. Lawrence area after going through the St. Lawrence Seaway.

MR. SANFILIPPO: I would like to offer that in evidence.

MR. GOODENOUGH: Objection.

MR. CORWIN: Objection.

MR. SANFILIPPO: I hear no reasons as to why it's objected to.

MR. GOODENOUGH: That document has no indication that it came from the files of Seven Seas. We don't know where it came from.

THE COURT: This is the manifest of the cargo. What difference does it make if it's received in evidence? As a matter of fact, it shows there were shipments made by others than Nimpex. It shows the Socomet being one of the shippers here, that is the shipper the witness just referred to, is that right?

THE WITNESS: Yes, sir.

THE COURT: Why are you objecting?

MR. CORWIN: These documents were sougnt both on the deposition of Mr. Jones and by subpoena at one of the trial days that we have had. This document has never been seen before, I believe, by Mr. Goodenough nor by myself. We are wondering where it has come from.

THE COURT: Take time to look at it and see if you have any objection.

MR. CORWIN: I just want to know where it came from.

THE COURT: Where did it come from, Mr. Sanfilippo?

MR.SANFILIPPO: Out of my file. If I had been asked for that I would have given it to him.

THE COURT: Your adversary asked for it.

MR. SANFILIPPO: I think Mr. Corwin may be mistaken.

MR. CORWIN: I will put in the subpoena. I would like to know from whose file. I'm sure Mr. Sanfilippo --

MR. SANFILIPPO: It originally came from the Seven Seas' files.

MR. GOODENOUGH: Plaintiff would have no objection, your Honor.

MR. CORWIN: I would like to have some testimony again as to where it came from. I don't know where it came from.

THE COURT: Mr. Jones, do you know where that exhibit came from?

THE WITNESS: Yes, World Shipping as agents for Ferrostahl Corporation.

THE COURT: As what?

THE WITNESS: As agents for Ferrostahl who was time charterer. The ship would make up a list of the shippers showing who the shipper of the cargo was, where it is going, how much, describe it, general remarks and so forth. It winds up as a manifest. This particular sheet of paper could have come from the ship's records. It could have come from the agent's office, it could have come from our office, from Nimpex' office, it could have come from a custom house, it could have come from any one of 15, 20 places.

Where Mr. Sanfilippo came up with this particular sheet I don't know but they are common knowledge throughout the world. It's the ship's manifest. It's not something that was forged or anything else. It's made up in Cleveland and sent throughout the world where the ship's going to be at any time for anybody that has any interest in it.

THE COURT: Mr. Sanfilippo, where did you get the document?

MR. SANFILIPPO: I am pretty sure it came from his office. The captain doesn't necessarily know where I got it.

THE WITNESS: Maybe the insurance guy brought it up for him. I don't know where it came from.

MR. CORWIN: I object.

THE COURT: What is your objection to it, Mr. Corwin? I don't understand. What is your basic objection?

MR. CORWIN: My basic objection is that this is a document we have asked for, that Mr. Jones is now making statements concerning agency, who he thinks prepared it, who he thinks the agent acted for.

B27 THE COURT: Tell me in terms of this case what difference does it really make?

MR. CORWIN: There is a question --

THE COURT: Except that you haven't seen it up to now although you say you demanded it.

MR. CORWIN: On the document itself there is an indication of the agent's identity and I don't think it's clear as to who they were acting on behalf of.

THE COURT: Who was acting on behalf of whom?

MR. CORWIN: World Shipping, a question on whose behalf it was acting, I believe. I am not sure if the document represents or indicates on whose behalf --

THE COURT: I won't take that as proof of agency.

MR. CORWIN: Then I remove my objection.

xx (Defendant Seven Seas Exhibit N received in Evidence.)

Q Capt. Jones, do you know who prepared this document, Exhibit N, Seven Seas Exhibit N?

A World Shipping had to prepare it.

Q Who is World Shipping?

A World Shipping is a recognized steamship agent in the Port of Cleveland, Ohio, who handles vessels in and out of the Port of Cleveland, Erie, Toledo.

Q With regard to the shipment of the POLARLAND, who was World Shipping representing, if you know?

A I don't know.

Under the time charter, under the freight agreement, Seven Seas had the right to tell Ferrostahl who the agent would be but they would be paid for by Ferrostahl. They represent the ship and Ferrostahl. We merely appoint the agent or nominate who they will be.

MR. CORWIN: I object to the answer in that he is making an interpretation of a clause in a document which is already in evidence.

THE COURT: I sustain the objection. You may point out first the clause to me which the witness referred to, Mr. Sanfilippo, and if there is a clause such as you suggest I will let him testify that he made the designation but show me the clause first. That would be the agreement between Ferrostahl and Seven Seas Shipping Corporation.

What clause are you referring to?

MR. SANFILIPPO: Clause 7 of Exhibit 13.

THE COURT: This only refers to "In every case the charterer" -- that would be Seven Seas -- "shall appoint his own broker or agent at the port of landing and the port of discharge." That refers to the charterer's agents.

THE WITNESS: That is right, that is me.

MR. CORWIN: I believe you are not looking at the exhibit that I think you are looking at.

THE COURT: I asked for the agreement between Ferrostahl and Seven Seas. This is it.

MR. CORWIN: Which clause is that again?

MR. SANFILIPPO: 7.

MR. CORWIN: I thought I heard him say owners, I am sorry.

MR. SANFILIPPO: Did your Honor read the balance of that section which says, "Owners paying customery agency fee"?

THE COURT: Is that in 7 too?

MR. SANFILIPPO: Yes, sir, it is typed in.

You are sustaining the objection. The interpretation of the trade, as Capt. Jones interprets it, is that this calls for the appointment of the agent by the charterer to act for the carrier. It is a customary thing to do particularly where the carrier --

THE COURT: That is your statement.

MR. SANFILIPPO: I would like to have him testify to it but it may meet with your objection because it's attempting to interpret by oral evidence a written contract.

MR. CORWIN: I think the clause speaks for itself. It indicates in every case charterer shall appoint his own broker or agent.

MR. SANFILIPPO: Read the rest of it.

MR. CORWIN: Both at the port of loading and the port of discharge. Owners paying customary agency fee. I think the only thing in question here is whether, in fact, Mr. Jones appointed his own broker or agent and, if so, who they were. I don't think he is in a position --

THE WITNESS: I have negotiated probably 5 hundred contracts similar to that in the last 10 years. It's very simple. When you are negotiating either this charter here with Ferrostahl for Molena Trust, or freight agreement, we also argue about whose agents are you going to use because we are concerned with our property just like you are concerned with your property. Naturally, you are renting the ship from me, you want to use your agents so you can handle the ship. When I start giving you cargo I want to know who is going to handle my cargo. So we reserve the right to say he is going to be the agent for you. You pay him.

But at least I know that he is going to do a good job. He is the vessel's agent appointed by me and paid by me. It's that simple.

You can argue, you attorneys, all day long but that is what the clause means and it's accepted throughout the shipping industry.

MR. CORWIN: I ask that the answer be stricken as unresponsive.

THE COURT: I will take it as proof of custom. The clause does seem somewhat ambiguous.

MR. SANFILIPPO: I have marked as Seven Seas Exhibit P a photocopy of the front and back of a check and 2 invoices. The invoices, your Honor, deal with regard to the POLARLAND and the PENGAL and the reason why they are put together is that the check is drawn in one sum for the 2 bills.

Q Captain, I ask you to examine these documents. Are those documents received by Seven Seas?

A Yes, sir, they are.

Q Is that check a check of Nimpex?

A Yes, it is.

Q Does invoice No.7095, which is one of the 4 sheets in this exhibit, apply to the POLARLAND?

A Yes, it does.

Q How much is the charge there?

A $6,678.87.

Q What is the charge for?

MR. CORWIN: I am going to object to the witness reading from a document not in evidence.

It's addressed to Seven Seas and crossed out.

THE COURT: Objection sustained.

MR. SANFILIPPO: I would like to explain.

THE COURT: He is objecting to the reference by the witness to matters contained in a document not in evidence. He is suggesting that you offer it in evidence.

MR. SANFILIPPO: I will offer it in evidence, your Honor.

MR. CORWIN: I don't think the witness has said what it is yet although he was reading from it. I don't believe there is any foundation laid at all. He hasn't identified it.

MR. SANFILIPPO: It's a document received in the usual course of business by Seven Seas, a document addressed to it.

THE COURT: Put the questions to him and save time.

Q Is this a document received by Seven Seas, Captain?

A Yes, this is an invoice from Great Lakes International Corporation for the loading of the cargo on board the POLARLAND, incorrectly addressed to Seven Seas, and I sent it on down to Nimpex International for payment.

THE COURT: That last statement is stricken out, incorrectly addressed to Seven Seas.

MR. CORWIN: I don't believe the witness has identified the document on top of the invoice. The invoice is already in evidence.

Q Would you please state again where that copy of that check came from?

A The checks are issued by Nimpex International and made out to Great Lakes International Corporation in payment of the bill, sir.

Q Would the Seven Seas --

MR. CORWIN: Objection. I don't know on what grounds this witness can state what Nimpex does.

MR. SANFILIPPO: Wouldn't that be a proper subject for cross-examination, sir?

THE COURT: Those are not the original checks, are they?

MR. SANFILIPPO: No, sir. We have not used the originals in any respect here, sir. We have used photostats all the way through.

MR. CORWIN: I am trying to establish where this witness got a check from Nimpex. I understand the invoice was sent to Seven Seas but this witness is from Seven Seas. The check is a Nimpex check, as it indicates on it, and I don't know where it came from.

B28 THE COURT: Did you originally get the invoice from Great Lakes?

THE WITNESS: Yes, sir.

THE COURT: What did you do with the invoice after you got it?

THE WITNESS: I sent it -- you have to understand our interoffice relationship up there. I am like the right hand for Nimpex International, any problems in shipping comes to me. When we booked this cargo -- maybe nobody wants the truth here. Are you afraid of the truth or something?

MR. CORWIN: I would like to hear you.

MR. SANFILIPPO: Direct yourself to the question of the Court, please.

THE WITNESS: We are like an interoffice corporation, Seven Seas and Nimpex doesn't enter into it at all. Anything coming up in shipping they turn it over to us and we handle it. When this cargo came up I called Great Lakes International and told them they had cargo coming through there, would they handle it with the same terms and conditions as the contract we had with them if it was Seven Seas cargo and they agreed they would.

After it was all loaded and so forth, Great Lakes sent the bill to me. I said, "Well, that is not our bill, make up another one and send it to Nimpex." I said, "Oh, hell, send it to Nimpex and tell them to pay it", which is what we did. This went to Nimpex. This speaks for itself. It's a check paying these bills to Great Lakes International.

THE COURT: It's a photostat of a check?

THE WITNESS: Yes, sir.

THE COURT: How did you get the photosat?

THE WITNESS: Presented here to me.

MR. SANFILIPPO: We obtained it from the files of Seven Seas, your Honor, just like all the other documents that have been admitted in evidence here. We don't go to Capt. Jones to get documents out of files, we go to some of the clerks.

MR. GOODENOUGH: I would object.

MR. CORWIN: I don't think Mr. Jones has said where the check came from.

MR. SANFILIPPO: May I have that, please.

MR. CORWIN: That is what I am interested in.

MR. SANFILIPPO: I will delete the checks.

MR. CORWIN: It's a simple question, where did the check come from.

MR. SANFILIPPO: He didn't get it from anywhere, therefore, he can't say something that he doesn't know as a fact. Consequently, he is not saying from where they came.

I would like to offer these invoices in evidence.

MR. GOODENOUGH: They are already in. There are copies of them in.

xx (Defendant Seven Seas Exhibit P received in Evidence.)

THE COURT: Go ahead.

Q Captain, was this invoice insofar as it pertains to the loading of the POLARLAND, was that paid?

A Not by Seven Seas.

Q Was it paid, to your knowledge?

A Yes.

Q By whom was it paid, if you know?

A Great Lakes International and Nimpex worked out the arrangements for payment.

Q Who paid it?

A Nimpex International paid it.

Q I show you a document which I have marked as Seven Seas Exhibit Q. Is this a document that was received by Seven Seas?

A No, it wasn't.

Q Whom was it received by?

A Nimpex International.

Q It was sent directly to Nimpex?

A Yes, sir.

MR. GOODENOUGH: Your Honor, I object. This gentleman seems to have an uncanny knack of coming up with Nimpex documents.

MR. CORWIN: I don't believe -- well, I haven't seen the document.

MR. SANFLIPPO: All he has to do is read the document and he can see it was addressed to Nimpex.

MR. CORWIN: but that is not testimony from the witness.

MR.SANFILIPPO: Why isn't it?

MR. CORWIN: He has to have personal knowledge of the document beforehand. He can't just read from the document.

Q Did you get a copy of this document?

A Yes, we did.

Q Was it the usual course of your business to receive copies of invoices addressed to Nimpex on ocean marine matters?

A If they wanted to get paid from Nimpex --

Q Yes or no.

A Yes.

Q Was it the usual course of your business to receive these documents?

A Yes, it was.

MR. SANFILIPPO: I would like to offer this in evidence, your Honor.

MR. CORWIN: I would object first to the second sheet which I don't know what relevance it has to what we are discussing here. It mentions the vessel M/PENGAL and the first sheet in Exhibit Q I don't know what relevance it has to this matter.

THE COURT: The second sheet has nothing to do with this case.

MR. SANFILIPPO: The reason I put it together before is because I had the check attached to it. And now I can delete it. It's merely the first sheet that I am interested in.

THE COURT: I will receive it.

xx (Defendant Seven Seas Exhibit Q received in Evidence.)

Q Captain, was Seven Seas ultimately billed for sea freight for the POLARLAND's voyage in May to Antwerp?

A Yes, I believe they were.

Q I would like you to examine this document and tell us is this a document received by Seven Seas?

A Yes, it is.

Q Is it the usual course of Seven Seas' business to receive documents such as that?

A Yes, it is.

MR. SANFILIPPO: I would like to offer it in evidence.

MR. GOODENOUGH: No objection.

MR. CORWIN: The only objection I have is again there is a subpoena that was served against Seven Seas for all these documents and this is the fist time I have ever seen them.

MR. SANFILIPPO: Are you sure you didn't serve Nimpex? My recollection is Nimpex.

MR. CORWIN: I served Seven Seas.

xx (Defendant Seven Seas Exhibit R received in Evidence.)

THE COURT: Who is the Faktunto Junger & Company? This doesn't have any meaning to me at this point.

Is this the freight charge that was made by Ferrostahl to Seven Seas Shipping?

THE WITNESS: Yes, sir.

THE COURT: I take it that Seven Seas Shipping made whatever the difference was between the charge shown in this bill and what you charged Nimpex?

THE WITNESS: I think it was $1 a ton, sir.

THE COURT: This was really the charge under the charter party, I take it?

THE WITNESS: That is right, sir.

Q I show you documents which I have marked Seven Seas Exhibits S and T, respectively. Are these documents that were sent out by Seven Seas?

A Yes, sir, they were.

Q Is it the usual course of Seven Seas' business to send out such documents?

A Yes, it is.

MR. CORWIN: Initially I will object to T. I don't know what bearing it has on the issues in this matter. It's an invoice from Seven Seas to Philipp Brothers Inc.

MR. SANFILIPPO: It shows the division of the charges made on the prior exhibit.

THE COURT: Who is Philipp Brothers Inc.?

THE WITNESS: Soc met, sir.

THE COURT: That is the other shipper?

THE WITNESS: That is right, sir.

THE COURT: What does that have to do with this case?

MR. SANFILIPPO: Under the charter party he was obligated to pay a certain amount.

THE COURT: What difference does it make as far as the claim of the original claim of Nimpex against Seven Seas is concerned?

MR. GOODENOUGH: Plaintiff has no objection to this, your Honor.

THE COURT: It will be received as far as the plaintiff is concerned but sustained as far as Vestland is concerned.

MR. CORWIN: I think Mr. Goodenough was referring to S and not T.

THE COURT: I see. Withdraw the last ruling. It's a different exhibit.

What is your objection to Exhibit S, Mr. Corwin?

MR. CORWIN: I don't have any objection to it.

THE COURT: Exhibit S is received without objection to either side.

MR. CORWIN: I have the same objection to these documents, none of which have been seen before.

THE COURT: All these documents were received by you in the regular course of business and kept by you in the regular course of business and it was the regular course of business to keep such documents?

THE WITNESS: You say by me personally --

THE COURT: By Seven Seas.

THE WITNESS: Yes, sir.

B29 THE COURT: And you identified them as copies of documents contained in the files of Seven Seas?

THE WITNESS: Yes, sir.

xx (Defendant Seven Seas Exhibits S and T received in Evidence.)

THE COURT: Mr. Sanfilippo, I should tell you we are sitting only to 4:20 today. The new United States

Attorney is being sworn in at 4:20 and I said I would attend the ceremony. You are not going to finish with this witness today anyway.

Q Referring to POLARLAND Exhibit P, paragraph 35, I read the provisions of that paragraph: "If required by charterers, the Master, the charterers and/or their nominees or agents are hereby authorized by owners to sign on Master's and/or owner's behalf bills of lading according to mate's receipts or tally clerk's receipts without prejudice to this charter party."

Do you remember that provision, Captain?

A Yes, I do.

Q Did the charterer at some time request one of its people to have the authority to sign bills of lading?

A Did the charterer?

Q Let's go this way.

I ask you to look at this document which I have marked as Seven Seas Exhibit O.

A Yes, sir.

Q Is that a document that was formulated pursuant to the paragraph that I just read to you?

A Yes, it is.

MR. SANFILIPPO: I would like to offer this in evidence.

MR. GOODENOUGH: This is Seven Seas bareboat charter --

MR. CORWIN: No, that was POLARLAND.

I object to this. There is no indication to whom it was sent. There is no indication as to the authenticity of the signature on here. There is no indication of a date.

MR. SANFILIPPO: May I ask some questions, please.

MR. CORWIN: There is no foundation.

Q Was this document received by Seven Seas?

A This is a copy --

Q Was it received, Captain?

A Yes, it was.

Q Was it the usual course of business of Seven Seas to receive such documents?

A We would want confirmation that the Master of the vessel had given the agent the rights to sign the bills of lading.

Q The answer is yes. Was it the business of Seven Seas to receive such documents?

A We would have to have it.

MR. SANFILIPPO: I would like to offer it.

THE COURT: Was that document kept in the regular and usual course of business by Seven Seas?

THE WITNESS: Yes.

THE COURT: And was the regular course of business to keep such records?

THE WITNESS: Yes, it is.

MR. CORWIN: I still object to this. I believe the witness has said that the agent gets this document, not Seven Seas.

THE WITNESS: That is right, the agent got that and it's addressed to the agent but we would require a copy of that showing that the agent did get the authority to do that.

MR. SANFILIPPO: I suggest you read the contents.

MR. CORWIN: I have read it. I see it's not addressed to Seven Seas. I see it's not addressed to anyone.

THE COURT: The witness says that he received a copy of it in the regular and usual course of business and, further, it was the regular and usual course of business upon receiving a copy to put it in the files.

MR. CORWIN: I have the same objection to this as the other documents. It was not produced pursuant to the subpoena or the deposition.

THE COURT: You have repeated that statement. There is no material before me showing that you asked for the documents and that they were declined to you.

xx (Defendant Seven Seas Exhibit O received in Evidence.)

MR. CORWIN: If I might interrupt, I don't know whether it's proper, but to clarify my objections I would like to have the subpoena marked that was served on Seven Seas. I [illegible] out of order I will wait.

THE COURT: Wait until this is concluded.

Q Captain, I show you copies of Plaintiff's Exhibits--

THE COURT: I haven't seen this other exhibit. I assume you offered it in evidence because you wanted me to read it.

MR. SANFILIPPO: I am sorry, sir.

Q I show you copies of bills of lading, Exhibits 21A, B and C, and I direct your attention to the signature that is beneath that bill of lading, the first 2 copies.

A Yes, sir.

Q That signature says, J. Reynolds. Did you, at the time of the issuance of this bill of lading, have a J. Reynolds in your employ?

A Yes, we did.

Q Did J. Reynolds sign that bill of lading or those bills of lading pursuant to any authority that Seven Seas may have given to him?

A No, he did not.

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Q Would that authority have come through you or someone else in your organization?

A I am sorry?

Q Anyone else in your organization would have given Mr. Reynolds authority to sign these bills of lading other yourself?

A No one could give him the authority to sign the bills of lading.

Q Was that bill of lading signed pursuant to the authority set forth in Seven Seas Exhibit O, as far as you know?

A That is the only way they could have been signed.

Q It could have been signed by the authority given through that document, is that your answer?

A Yes, through World Shipping.

MR. CORWIN: Your Honor --

A From World Shipping.

MR. CORWIN: I will object to the answer. It's contradictory in that he has said that Mr. Reynolds is an employee of Seven Seas and he specifically said with regard to this document, which has been marked as O, that it is authority to World Shipping.

THE WITNESS: You didn't let me finish.

MR. SANFILIPPO: I would request, sir, that

Mr. Corwin rephrase his objection. I don't believe that he has the proper foundation for it if what he is saying is what I think he says.

THE COURT: Did you finish your answer?

THE WITNESS: No, I didn't.

Q You do not know specifically --

MR. CORWIN: I would like to hear the rest of his answer if he hasn't finished it.

A Would you read the question again and my answer up to a point.

(Testimony read.)

A Mr. Reynolds is our employee but that doesn't mean that World Shipping can't call up and say, "Hey, we got a bill of lading coming in there, we would want you to sign for us."

THE COURT: Why would World Shipping call up for Mr. Reynolds to sign?

THE WITNESS: Many times there are millions of dollars or thousand of dollar involved in the bill of ladings and it's necessary to get them into a bank in a certain period and you authorize certain people throughout the world to sign the bills of lading.

THE COURT: What was the nature of his employment in your company?

THE WITNESS: Assistant to me.

THE COURT: How long had he been with the company?

THE WITNESS: Two years.

THE COURT: And you are suggesting he didn't act on behalf of the Seven Seas Shipping Corporation when he signed that?

THE WITNESS: I distinctly stated he didn't act for Seven Seas when he signed that. He acted for World Shipping Corporation.

THE COURT: He volunteered to sign that for World Shipping?

THE WITNESS: World Shipping most likely air mailed the -- you have to understand the shipping practice, sir. They would have air mailed the bills of lading into New York because they were running out of time on a letter of credit or something --

THE COURT: Where was World Shipping located?

THE WITNESS: Cleveland, Ohio.

THE COURT: That is where the shipment was made from?

THE WITNESS: That is right.

THE COURT: That is where the cargo was received?

THE WITNESS: That is right.

THE COURT: World Shipping had offices there at the time?

THE WITNESS: In Cleveland.

THE COURT: We will take our adjournment until tomorrow morning at 10:00 o'clock.

(Trial adjourned to March 2, 1976 at 10:00 a.m.)

TRANSCRIPT OF PROCEEDINGS OF MARCH 2, 1976

jqds

Nimpex International, Inc.,

-vs- 72 Civ. 3779

SS POLARLAND, et al.

New York, New York
March 2, 1976--10:00 a.m.

B30

(Trial resumed.)

DAVY JONES, called as a witness on behalf of defendant Seven Seas, having been previously duly sworn, testified further as follows:

MR. SANFILIPPO: Your Honor, at this time I would like to offer once again Exhibit H for Identification into evidence. The basis for my offer is the deposition of Mr. Greg pursuant to which a number of other exhibits of an identical nature and obtained from the identical sources were admitted into evidence by this Court. The entry of those exhibits are Plaintiff's Exhibits 16 and 17 which were entered on page 178, 179 by the Court.

At first the Court states that it assumes that that document which is Exhibit 16 and which is a letter is kept in the regular course of business of Great Lakes International. Subsequently, Mr. Goodenough read a further portion of the transcript of Mr. Geg's deposition in which it shows that these were kept in the regular course of business and at page 179 of the transcript your Honor received this letter as received in the regular course of business of Great Lakes.

Subsequently, Mr. Corwin presented, offered and had admitted into evidence POLARLAND Exhibits E, F, G and H all upon the same basis. No objections were made to those documents going into evidence because of the prior ruling of the Court that he would accept them as business records of Great Lakes. This document -- we have a reference to it on a number of cases to Mr. Peachman's report. At page 217 of the transcript there is a reference.

THE COURT: First, what exhibit are you referring to there?

MR. SANFILIPPO: The survey report.

THE COURT: Where is it referred to here at page 179? What exhibit number is it?

MR. SANFILIPPO: 179 has Exhibits 16 and 17.

THE COURT: What report is this that you are referring to?

MR. SANFILIPPO: The report of Mr. Peachman.

THE COURT: What exhibit number?

MR. SANFILIPPO: Seven Seas H.

THE COURT: Where is there any reference to it in Greg's testimony, that is what I am asking you.

MR. SANFILIPPO: It is Exhibit 24 in Mr. Greg's testimony. I think it will be found at page 33.

THE COURT: Won't you answer my question, please. You are asking that it be admitted on the basis that other exhibits were received under the Section 1732. I am asking where is there any reference to that exhibit here in Mr. Greg's testimony?

MR. CORWIN: I might mention this was the offer that was withdrawn yesterday by Mr. Sanfilippo.

THE COURT: I can't stop the lawyers from coming back all the time.

MR. CORWIN: No, I know. I just thought Iwould point it out.

MR. SANFILIPPO: At page 29, which I had read into the transcript yesterday, there is a question, "Do you know if this shipment was surveyed before it went on board the POLARLAND or during the loading operation", and the answer is, "I believe we have a survey report. Yes, we have a survey report from Ralph Peachman, marine surveyor", and at that time Mr. Corwin had Exhibit 24 marked for identification.

Exhibit 24 I have marked and offered as Seven Seas H. Further at page 34 during the examination of Mr. Greg there is the following:

"Q And this survey by Mr. Peachman was done on your company's behalf?

"A Yes, sir.

"Q At your request?

"A Yes, sir.

"Q I say your, I mean your corporation."

"A Yes, sir."

There is another reference and I haven't noted it. I know there is another reference with regard to Mr. Peachman's survey. Identically held documents were offered and admitted into evidence --

THE COURT: No, please stick to this document. Assuming that it's admissible under 1732 of Title 28 where is there any evidence either in the witness' testimony to which you are now referring or otherwise which would indicate that this is a document kept in the regular and usual course of business? That is what I am asking you.

There is a reference to it from what you read but it doesn't qualify it under Section 1732. Won't you answer my question?

MR. SANFILIPPO: I am trying to find your answer, sir, because I know it's here.

THE COURT: You had overnight to find it after you withdrew the objection.

MR. SANFILIPPO: At page 52:

"Q On the bottom of the survey report marked Defendant

Exhibit 24, as I noted earlier, it indicates that there is apparently a complete list of the coils loaded on board and that is in the possession of Mr. Peachman. I would ask that you request Mr. Peachman to provide you with a copy of this listing of the coils and I will further request that you provide that document to Mr. Karl for copying."

That is a further reference to it. At page 53 of the transcript Mr. Coburn offers to pay the charges for Mr. Peachman for the production of that list.

Yesterday your Honor said who does this survey report bind. It binds either of Seven Seas or Nimpex. If this loading was done for the --

THE COURT: You are certainly not up to that point. You have to get it in evidence and I am repeating my question to you: Where is there anything to warrant its admission under Section 1732? You are all over the lot and you are referring to the document and you still haven't answered my question.

MR. SANFILIPPO: There are general references to all of these exhibits.

THE COURT: On your statement the objection is sustained. Your application to admit it is denied for failure to qualify its admission under 1732.

MR. SANFILIPPO: May I respectfully request that the same ruling be applied to the other documents such as --

THE COURT: You made no objection at that time. Let's not go over and retry this case. You have a witness on the stand.

Are you going to complete his examination or not?

MR. SANFILIPPO: I am, your Honor.

THE COURT: Well, please proceed.

DIRECT EXAMINATION CONTINUED

BY MR. SANFILIPPO:

Q Captain, in May of 1970 did Seven Seas have a form of bill of lading which it used?

A Yes, it had a line bill of lading, a company bill of lading.

Q When would it use that bill of lading form?

A We would use it whenever we were supposed to be carrying cargo.

Q Is this document which I have marked as Seven Seas Defendant Y a form of that bill of lading used by Seven Seas?

A Yes, it is.

Q And that was used on all shipments carried by Seven Seas?

A This would be on a ship where we time charter the ship and we booked the cargo and loaded it on there for the account as carrier.

MR. SANFILIPPO: I would like to offer this in evidence.

MR. CORWIN: I object, your Honor.

MR.GOODENOUGH: I object, your Honor.

MR. SANFILIPPO: No reasons have been stated.

MR. GOODENOUGH: This bill of lading has no relevance to this particular matter in suit.

MR. CORWIN: It's not even a bill of lading, your Honor, and I don't think there has been any foundation laid for it and it would seem that it impeaches Mr. Sanfilippo's own witness in that the witness said when he was the carrier or when he loaded shipments they would use this form. I believe the documents --

THE COURT: What is its relevance as far as this case? The bill of lading wasn't issued on this form, was it?

MR. SANFILIPPO: No, sir. The most crucial issue in this case is who issued the bill of lading, who was the carrier. The captain has testified that if it was carrying goods they would have used their normal form --

B31 THE COURT: Objection sustained. The case will be decided on the documents that were executed by the parties, not blank forms that were not used.

Q Captain, in the course of your business have you had the occasion to be in Belgium the Netherlands?

A Many, many times.

Q What was the purpose of your being there?

A I contracted the stevedores over there for loading cargo and for discharging cargo from Seven Seas Shipping.

Q During your visits or business visits to Belgium or the Netherlands, did you have occasion to load or discharge coils?

A Yes, sir, in 1968 I think we carried approximately 600 thousand tons. In 1969 I think we loaded about 750 thousand tons, and in 1970 we took about 400 thousand tons back to Antwerp and discharged them there.

Q During the course of this loading or discharging in Europe, in Antwerp, did you have occasion to come across ovalized coils?

A Yes, sir, many times.

Q You heard Mr. Reynolds' testimony regarding the technique of jacking out ovalized coils, did you not?

A Yes, sir.

Q Do you know of your own knowledge if that technique exists in Antwerp?

A Yes, Cazzenotti Terminal and Gilson Terminal both use a reroller or jacking, whichever is required. First, normally it would be jacking on the extremely ovalized, if possible. Beyond that they would take the ovalized coils and reroll them, reband them, sometimes even as much as reenvelope them prior to shipping or continued on inland transportation whether it's an inward or outward discharge.

Q The rerolling, would that be an extreme situation?

A The rerolling would be where the coil is telescoped and completely lost or all its bands are loose. They would pick it up with a fork lift truck, run it through the machine, rewind it, reband and fit for shipping.

Q Yesterday we spoke of a management contract between Vestland and Molena Trust?

A Yes, sir.

Q Did you have anything to do with the implementing of that agreement?

A Yes, I did.

Q Would you tell the Court what your functions were with regard to that agreement?

A I agreed with the agreement with management, with Vestland Corporation, Rich Amlie personally and his assistants over there. We drew up this agreement and the agreement was that they would manage the ships under their jurisdiction. We would provide them with a cash outlay if necessary.

THE COURT: Who is the "they"? You said "they would", who is "they"?

THE WITNESS: Rich Amlie, sir, or Vestland. When I refer to Rich Amlie here that is the only thing I have been referring to for 7, 8 years.

Q Under that agreement, who appointed the Master to the vessel?

A Amlie Corporation.

MR. CORWIN: I wil object to the witness being questioned about documents not in evidence.

MR. SANFILIPPO: I am not asking about documents not in evidence. I am asking from this man's personal knowledge of that agreement --

THE COURT: Objection sustained. The agreement will speak for itself.

MR. SANFILIPPO: The agreement you ~~received~~ refused to put into evidence.

THE COURT: Objection sustained.

MR. SANFILIPPO: I am at a loss to understand your Honor's ruling. The agreement I concede was not signed. You have a right --

THE COURT: Produce the original agreement. That isn't beyond the power of your client or anybody to subpoena the proper records. This case is being tried in a most irregular way, as far as offers of evidence are concerned, and I am a little tired of the Admiralty lawyers having this attitude that they are so courteous to one another, they resolve their problems beyond the rules of the Court.

This case is a prime example of how a case should not be tried. There is an agreement in existence, produce it. If it's properly offered I will admit it.

MR. SANFILIPPO: If I could have gotten --

THE COURT: I don't know whether you could or could not have. This case has been pending a long time. That goes for all the lawyers in the case. There is a proper way to try a case.

MR. SANFILIPPO: I would think this man's knowledge --

THE COURT: You offer the document in a proper way and it will be admitted into evidence. You all referred to this agreement. A blank, unsigned proposed agreement or form of agreement is not the exhibit.

MR. SANFILIPPO: That is the only exhibit I have to offer, sir, and I respectfully take exception to the present ruling that this man can't testify from his own knowledge --

THE COURT: The objection as made by opposing side is sustained. The Court will act upon an offer of the original document.

MR. SANFILIPPO: The original document is unavailable.

THE COURT: That is your statement and that isn't evidence either.

MR. SANFILIPPO: I have no further questions, sir.

THE COURT: You may inquire.

MR. CORWIN: With the permission of the Court I would examine first and Mr. Goodenough is going second.

THE COURT: Whichever way you gentlemen agree is fine.

CROSS-EXAMINATION

BY MR. CORWIN:

Q Mr. Jones, I believe you testified yesterday that you signed an agreement on behalf of Molena, is that correct?

MR. SANFILIPPO: And whom?

MR. CORWIN: I am just asking if he had said yesterday that he signed an agreement on behalf of Molena.

MR. SANFILIPPO: I object unless we know with whom that contract was signed. He has signed many contracts on behalf of Molena.

Q Referring to POLARLAND P, did you testify that you signed this on behalf of Molena?

A Yes, that is my signature down there.

Q Is there any indication on the bottom that you were signing on behalf of Molena?

A The document speaks for itself, sir.

Q If you can answer the question --

A The document speaks for itself.

Q Is there any indication on the bottom of this above your signature that you were signing on behalf of Molena?

MR. SANFILIPPO: I object to the question. The document does speak for itself. If there is something signed there it would be read. Otherwise the witness should not be harassed about it.

THE COURT: What exhibit is that?

MR. CORWIN: This is Exhibit P, your Honor, the charter party between Molena Trust and Ferrostahl.

THE COURT: I don't see there is any indication on whose behalf that signature appears. I will allow the question.

Q Is there an indication at the point where you signed this that you signed it on behalf of Molena?

A Any Admiralty lawyer would know that I couldn't sign other than under Molena Trust or for Molena Trust and on their behalf, sir.

MR. CORWIN: I ask that the answer be stricken.

THE COURT: The answer is stricken.

Q The question is simple.

Is there an indication at your signature that you signed on behalf of Molena Trust?

A I think on the original you will find it says. Molena Trust down there.

Q In other words, the original is not --

A I don't have the original in front of me. I don't know. I know this, I can't sign except for Molena Trust on that charter party and so do you.

MR. CORWIN: I ask the answer be stricken.

THE COURT: Please answer the question.

THE WITNESS: Sir, I sat here as an Admiralty expert too and I am getting a little exasperated too.

THE COURT: You may get exasperated but you are not answering the question.

THE WITNESS: I have answered the question.

THE COURT: We will have no more of this nonsense. I have had enough with the lawyers.

Q Mr.Jones, you did sign this charter party which has been marked P on behalf of Molena Trust, is that correct?

A That is right, sir.

Q I believe yesterday you testified that you had a close working relationship with Nimpex, is that correct, your Seven Seas Shipping Corporation?

A That is right.

Q They are down the hall, I think you said, is that correct?

A You heard me.

Q Is that correct?

A That is right, sir.

B32 Q The employees in both offices worked together more or less on let's say a problem like this where you are involved with the shipment of steel that is being shipped by Nimpex and Seven Seas has some relationship to the carriage of the shipment, you would be working together with Nimpex, is that correct?

A I would be giving him advice on how to handle it most likely.

Q And your offices customarily would be working together, different personnel in the office would be working with people in Nimpex and vice versa?

A I think I testified I would be working closely with them.

Q If I can finish the question. I am asking you the people in the offices of Seven Seas Shipping Corporation would work with the people in Nimpex, is that correct?

A No, I would be working with them.

Q In other words, it's not correct that you were the only person that would ever have any dealings with Nimpex?

A If they came down and asked the other people some questions they would most likely be referred to me, sir.

Q What I am trying to get at, people from Nimpex did come into your office, is that correct, in the same hall, down the corridor?

A Certainly.

Q And people from your office went down to the offices of Nimpex on occasion?

A I would most likely be going down there.

Q Were the people at Nimpex familiar with the personnel in your office?

A Yes, we all knew each other.

Q That is what I am referring to.

I think yesterday we referred to these Exhibits 21A and B. I am not sure if you looked at them. Have you seen them yesterday or if not are you familiar with them?

A Yes, I am familiar with them. I saw them yesterday.

Q This is 21A and this is 21B. This is Mr. Reynolds signature at the base or the foot of 21A and B?

A Yes, that is Mr. Reynolds' signature.

Q I think you said, or you testified yesterday, that Mr. Reynolds, in your opinion, did not have the authority to sign bills of lading, is that correct?

A Would you rephrase -- would you say that question again?

Q Yes. I believe your testimony yesterday was that, in your opinion, Mr. Reynolds did not have authority to sign bills of lading?

A No, that is not what I stated yesterday.

Q Maybe you can say what you said.

A I stated yesterday on behalf of Seven Seas he did not have Seven Seas' authority to sign that bill of lading. The authority for signing that bill of lading had to come from World Shipping.

Q Let me ask you this: I believe that you stated yesterday -- and if not, tell me if this is accurate -- that, in your opinion, Seven Seas Shipping did not give the authority to Mr. Reynolds to sign on its behalf, is that right?

MR. SANFILIPPO: Objection to the form of the question. The question that was asked is didn't Mr. Reynolds have Seven Seas' authority to sign this bill of lading and the answer to that was no.

MR. CORWIN: I think I asked the same question.

MR. SANFILIPPO: Not that I believe.

MR. CORWIN: I will withdraw the question.

Q As Mr. Sanfilippo said, and I will try to quote him, it's your testimony and your opinion that Seven Seas

Shipping did not give the authority to Mr. Reynolds to sign bills of lading, is that correct?

A I can't answer that yes or no the way you are asking it.

Your Honor, with all due respect, I think all we are after here is the truth. If you are asking me did Mr. Reynolds have Seven Seas' authority to sign that bill of lading on behalf of Seven Seas the answer is no. He did not.

Q That is what I wanted.

A Fine.

Q All right. This would then be -- his signing of a bill of lading -- unusual or, in your mind, was not done, is that correct?

THE COURT: I don't understand that question.

MR. CO[illegible]: I will rephrase it.

Q Mr. Reynolds did not have authority to sign bills of lading on behalf of Seven Seas Shipping, is that correct?

A He had authority to sign bills of lading in behalf of Seven Seas Shipping for Seven Seas' bills of lading, yes, but not that bill of lading there. There is a big difference.

Q He did not have authority to sign other bills of lading on behalf of Seven Seas Shipping?

A That is right.

Q Unless they are specifically seen by you, this is what you would maintain?

A Not at all.

Q Did Mr. Reynolds sign bills of lading on behalf of Seven Seas Shipping?

A Seven Seas Shipping bills of lading.

Q On a Seven Seas form of some kind?

A That is right.

Q So when he signed this bill of lading this is without the authority of Seven Seas Shipping Corporation?

A Without the authority of Seven Seas but with the authority of somebody else.

MR. CORWIN: I will ask that portion of his answer be stricken, your Honor. I don't believe he is competent to testify as to what Mr. Reynolds was doing at the time. He is bringing into play, I think, the same thing he was saying yesterday that possibly there was a phone call of some kind. I don't believe he is competent to testify about a phone call to Mr. Reynolds.

THE COURT: Go on to your next question. I will let the answer stand.

Were there any other bills of lading issued with respect to the Nimpex shipments other than those that are in evidence, as far as you know?

THE WITNESS: If I can look at the manifest I can answer you. I think there were only three bills of lading, I am not sure.

THE COURT: Apart from those bills of lading I take it there were no other bills of lading issued in connection with the shipment?

THE WITNESS: Oh, yes. With this shipment here, sir?

THE COURT: Yes.

THE WITNESS: If these 3 bills of lading cover the entire shipment that is all there would be but there are other bills of lading on that ship.

THE COURT: I am only talking of the shipments that are at issue in this case. More than one set of bills of lading would not be issued for a particular shipment.

THE WITNESS: There would be --

THE COURT: Nimpex was entitled to receive bills of lading with respect to this shipment that was loaded aboard the vessel?

THE WITNESS: Yes, sir.

THE COURT: Other than the bills of lading in evidence with respect to these shipments obviously there were no other bills of lading issued. That is as to that shipment.

Was Nimpex entitled to a bill of lading?

THE WITNESS: Are you just saying these 3 bills of lading or all the copies that go with the bills of lading?

THE COURT: These bills of lading, the bills of lading covering the shipment.

THE WITNESS: Yes, sir, there would be 3 original bills of lading, 9 sheets, and bills of lading 1, 2 and 3, and many copies.

THE COURT: Nimpex was entitled to receive the bill of lading?

THE WITNESS: Yes, sir, all of them.

THE COURT: And those are the bills of lading that were issued?

THE WITNESS: Yes, sir.

THE COURT: And they bear the signature of Reynolds?

THE WITNESS: Right, sir.

Q Were there other bills of lading issued with Mr. Reynolds' signature not on the form that you discussed as a Seven Seas' form?

A Yes, I believe he signed the bills of lading for Socomet shipments out of Cleveland also.

Q Were there any others besides those?

A No, that was all.

Q That was all?

A Yes, for this particular ship.

Q I am not talking about this particular ship.

Was it customary in your office for Mr. Reynolds to sign bills of lading other than Seven Seas' bills of lading?

A It's customary in all steamship offices to cooperate in other agencies in issuing bills of lading as quickly as possible, yes, sir, it is customary.

Q It was customary?

A Yes. It's understood that you have to have the authority to do it from the people you are signing for and on their behalf.

MR. CORWIN: I ask that be stricken. There is no question to the witness.

THE COURT: Stricken as a volunteered statement.

While counsel is looking at whatever he is looking at, with respect to Plaintiff's Exhibit 14 which I now show you, is this a form of contract which was prepared by Seven Seas Shipping Corporation?

THE WITNESS: No, this is a contract which we had in the office that we used for interoffice booking notes, more than anything else.

B33 THE COURT: That is what I am asking you. Is that the form used by Seven Seas Shipping Corporation?

THE WITNESS: Not for outside bookings, no, sir, inner-office relationships, yes.

THE COURT: This is an agreement that is in evidence that was signed between Seven Seas Shipping Corporation and Nimpex.

THE WITNESS: Right, sir.

THE COURT: Where did that originate, that form, is what I am asking you?

THE WITNESS: This form --

THE COURT: Who prepared that form, that agreement?

THE WITNESS: Harvey Allen of Burlingham, Underwood & Lord prepared it, sent it up to the office, and I wouldn't accept it for outside bookings and it remained in our office and we began to use it for interoffice exchange, sir.

THE COURT: Perhaps I am not making myself clear. Who prepared that form prior to its execution by the parties? Is that a form that you had in your files, whether Burlingham prepared it or anybody prepared it?

THE WITNESS: We prepared it and made many copies of it and never used it.

THE COURT: But you used it in this case?

THE WITNESS: We began to use it for interoffice memorandum, like a scratch pad.

THE COURT: You say an interoffice memorandum like a scratch pad. That is the agreement between you and Nimpex?

THE WITNESS: It's merely initialed and never signed. I don't know how else to refer to it.

THE COURT: Isn't that the agreement that was entered into between Nimpex and Seven Seas? Is that what you are referring to as a scratch pad?

THE WITNESS: I am referring to it as an interoffice agreement, interoffice memorandum, or whatever you wish to call it.

THE COURT: I think you are haggling, Mr. Witness. I must be frank with you and say that to you now.

The lawyers have evidently agreed that this is the agreement that was entered into between Seven Seas Shipping Corporation and the Nimpex Corporation with respect to the shipment that went aboard the vessel.

Are you disputing that?

THE WITNESS: I can't help what the lawyers have agreed, sir.

THE COURT: Whose signature is that?

THE WITNESS: It's my initials on there, sir.

THE COURT: Are you saying that is not an agreement between you and Nimpex?

THE WITNESS: I would refer to it and have in the office as a memorandum of what we are going to do with your cargo when you want it moved.

THE COURT: What was the reason for signing that?

THE WITNESS: So that we can collect the dollar a ton from them, sir.

THE COURT: Wasn't it to commit the Nimpex according to its terms?

THE WITNESS: Not basically, no.

THE COURT: Are you saying that was not the agreement then between Nimpex and you?

THE WITNESS: I am saying this is the only thing we have between Nimpex and us to indicate that we agreed --

THE COURT: I have no hesitancy, Mr. Sanfilippo, in saying that as far as this witness is concerned, that the teaching of Dyer against McDougal at 201 Fed.2nd will very much come into play.

Let me just ask you one more question. On page 2, the first or part of the first line, the full second line, the third line, and part of the fourth is stricken and the part that remains as cargo to be loaded, and beyond that there is stricken out the following: "Stowed, lashed and chocked by shipper's stevedores at shipper's risk, responsibility and expense."

Do you see that? That is the first three lines.

THE WITNESS: Right, sir.

THE COURT: Who struck out those words?

THE WITNESS: They probably did on my instructions, sir.

Q Capt. Jones, did you appear to have your testimony taken on May 28 at the offices of Hait, Gardner, Poor & Havens? Do you recall that? In May of 1974 was your testimony taken before in this case?

A Yes, my testimony was taken.

Q And you were sworn in and gave testimony on that date?

A Right, sir.

Q I would like to ask you a question and read the answer that you gave and ask you if these are accurate:

"Q Captain, this document we have marked as Defendant's Exhibit 12, will you tell us what that is again", and that is the same document that you have been referring to, your Honor, Plaintiff's 14.

"A It's a booking note we have between Seven Seas Shipping Corporation and Nimpex International."

Did you give that answer to that question?

A You are reading the testimony, sir.

Q Would you answer the question, please. Did you give this answer to that question?

A I assume I did if that was last year or 2 years ago.

Q Is that an accurate answer?

A More or less, yes, sir.

Q More or less?

A Right.

Q In other words, your opinion has changed now?

A No.

Q Would your answer be different today?

A It's a booking note but after the statements the Court has just made here I don't know what I am supposed to answer here. I am not supposed to tell the truth apparently.

THE COURT: That isn't so at all, Mr. Witness. You are sworn to tell the truth.

THE WITNESS: Then I would ask, with all due respect, to be allowed to tell the truth.

THE COURT: You answer the questions and answer them truthfully. That is all you are required to do.

Q Did you give that answer?

A Yes, I did. May I see it?

Q I will read it to you again.

"Q Captain, this document we have marked as Defendant's Exhibit 12, will you tell us what that is again?

"A It's a booking note we have between Seven Seas

Shipping Corporation and Nimpex International."

Did you give that answer to that question?

A Yes, I did.

Q And it was accurate?

A Yes, sir.

Q I am going to read you another question and answer and ask you again if the answer was accurate:

"Q Was the shipment we are talking about today booked in connection with this booking note we marked Exhibit 12?

"A Yes, sir."

A Yes, that is right.

Q And that question referred to this shipment we have been discussing here, the 299 coils, is that correct?

A That is right.

Q And that answer was accurate?

A Right, sir.

Q I believe yesterday you gave some answers to questions about a stevedore named Great Lakes, is that correct?

A Yes.

Q Did you mention a stevedore yesterday, Great Lakes International?

A I believe I did, sir.

Q Is your recollection of the circumstances surrounding the loading of this cargo better now than it was in May of 1974?

A I believe it is a little bit better. We have had a long time to look back and see what is going on. I have talked to Great Lakes International about it, yes.

Q I would like to read to you a question and answer that were given to you again in May of 1974 and have you answer if they are accurate:

"Q In this agreement with Nimpex who was responsible for the stowing, lashing and chocking and appointing stevedores?

"A Nimpex International."

A That is correct.

Q That is still your opinion?

A Yes.

Q "Question: Is that found in this agreement" -- referring to 12 --

"A I don't see it. I don't find it in there but I know all of it was because we had no stevedoring contracts on the Great Lakes."

"Q When you say "we" you mean Seven Seas?

"A Yes, sir."

Did you give those answers to those questions?

B34 MR. SANFILIPPO: I object to the form of the question. Counsel is attempting to entrap the witness to state that the statement is accurate as of this time. Since that question is asked a question has come up.

Capt. Jones has verified it and we have admitted it as being a contract with Great Lakes.

THE COURT: Doesn't the attorney have a right to question the witness as to his prior statements on the issue of credibility?

MR. SANFILIPPO: But not to entrap him, sir.

THE COURT: That is your statement, entrapping. I am going to ask the witness whether or not he was asked the question and gave the answer at that time and then he may make whatever explanation he wants, if there is any contradiction.

Q Did you give those answers to those questions on that occasion?

A I gave those answers at that time, yes.

Q And you were under oath at that time?

A Yes, I was.

Q Did you give these answers to these questions:

"Q Did you act on behalf of Nimpex in any capacity to appoint the stevedore to load the cargo we are talking about today?

"A Would I have acted in any capacity?

"Q Yes.

"A No, I doubt it."

Did you give those answers to those questions?

A Yes, I did.

Q They are still accurate?

A Still accurate. If I may ask one thing, what do you mean by capacity? As an officer of the company?

MR. CORWIN: Your Honor, I don't believe I am going to respond to his question. The question speaks for itself.

Is the answer accurate? Would you want to change your answer to those questions today?

THE WITNESS: I believe I asked you then for a clarification of capacity.

Q I will read the question again:

"Q Did you act on behalf of Nimpex in any capacity to appoint a stevedore to load the cargo we are talking about today?

"A Would I have acted in any capacity?

"Q Yes.

"A No, I doubt it."

A For Nimpex the answer is correct.

Q Again I am going to ask you or read to you another question and answer and ask if you gave them, page 19, line 13:

"Q Do you know who the stevedore was who loaded this shipment?

"A Well, there are only 2 up there. It would have been either Great Lakes Stevedoring Incorporated or Cleveland Stevedoring. I don't know which one it was."

Did you give that answer to that question?

A At that time I did, sir.

Q At that time you did?

A Yes, sir.

Q Was that an accurate answer?

A At that time, to the best of my recollection, it was.

Q You didn't know who the stevedore was?

A No.

Q You didn't know who the stevedore involved in this shipment was?

A No.

Q And now you do?

A Certainly I do now.

Q I show you POLARLAND Q. Is this your signature on the second page of Q?

A Yes, it is.

Q Can you tell us what Q is?

A Q is an exclusive contract with Great Lakes Stevedoring in the City of Cleveland for cargo which Seven Seas may control for loading.

Q Does this contract provide that Seven Seas will use GReat Lakes International as their exclusive stevedore in the Port of Cleveland during the 1970 season?

A For Seven Seas cargo, yes, sir.

Q Was the shipment that was loaded on the POLARLAND the 299 coils loaded pursuant to the provisions of this contract?

A No, sir, it was not.

Q It was not?

A No, it was not.

Q And your answer to the question given in May of 1974 was inaccurate when you said we had no stevedoring contracts on the Great Lakes, is that correct?

A Yes, that is what I said at that time, because we hadn't had any cargo out of the 1974 season or out of 1970. We hadn't loaded any cargo out of Cleveland.

Q Your answer was, "We had no stevedoring contracts on the Great Lakes." Was that your answer at that time?

A That was my answer at that time.

Q Is this a contract for stevedoring services on the Great Lakes?

A Yes, it is.

Q So this answer that you gave was not accurate, is that correct?

A That was inaccurate, that is right.

Q At the time of your deposition in May of 1974 you appeared pursuant to notice of examination as is indicated on the first page of the deposition pursuant to notices, dated February 22, 1974 and February 28, 1974, is that correct?

A I have no knowledge on what I appeared. All I know is we appeared and testified.

MR. CORWIN: Will counsel concede those were the notices pursuant to which Mr. Jones appeared?

MR. SANFILIPPO: Yes.

MR. CORWIN: Reading from the notice dated February 22, 1974, the second paragraph: "Please take further notice that you are to bring with you all documents, charter party agreements, reports, correspondence, contracts, bills of lading, receipts, invoices, memoranda, orders and/or agreements, and any other papers pertaining to the subject matter of the captioned litigation."

Before you appeared for your deposition and at the time you were at your deposition did you review your file concerning POLARLAND shipments?

A Yes, we did.

Q Did you give this answer to this question at that time, page 19, line 10:

"Q Do you have any correspondence with you today with the stevedore?

"A No, sir."

And dropping down to line 18 on page 19:

"Q Does your correspondence show any letters to the stevedore?

"A No."

Did you give those answers to those questions?

A Yes, I did.

Q Who was Morton Friedman?

A He is the son of Ben Friedman of American Industries

Q Did he have any connection with Seven Seas Shipping? Was he an officer of Seven Seas Shipping?

A At what time, sir?

Q During 1970.

A He has been in the past. I don't know whether he still is or not, sir. I think he is carried as secretary or something like that.

Q Excuse me?

A I think he is carried as secretary or treasurer or something like that.

Q Of Seven Seas Shipping Corporation?

A I think so.

Q Referring to POLARLAND K and L, is this correspondence between Seven Seas and Great Lakes Shipping?

A May I look at them?

Q Sure.

A That is the Seven Seas letterhead. I don't know where this is from. It has no letterhead. I don't know what this is on that but this is Seven Seas.

Q Referring to L is Seven Seas, but K you are not sure about?

A I don't know what it is.

Q It's addressed to you?

A Yes.

Q You are not familiar with Mr. Greg?

A I am familiar with Greg. It's not on his letterhead.

Q It's a carbon copy so it doesn't have his letterhead.

A Carbon copies make letterheads. There it is there.

Q Do you know who Mr. Greg is?

A He is the manager of the Great Lakes Stevedoring Corporation in Cleveland.

Q Do you believe POLARLAND K is from Great Lakes?

A I just merely asked why isn't the letterhead there. It's very strange that Greg would write me without a letterhead on it.

Q That is not a copy from your file, that is from

Greg's file.

Do you know whether K came from Great Lakes or not?

A I assume it did. I have to assume it did. I don't know.

Q And in K is the reference to a letter that you sent to Mr. Greg?

A It says so.

Q Did you send the letter to Mr. Greg?

A If I did he must have it, sir. I don't recall.

B35 Q I am wondering if you had sent a letter to Mr. Greg in connection with Philipp Brothers and the POLARLAND which is the caption at the top of K?

A All I know is that one way or another we communicated with Cleveland Stevedores and told them that the billing to us was incorrect for stevedoring charges, that they would have to bill directly the shippers.

We were not responsible for the billing of the stevedores in any way, shape or form. That is the only recollection I have and that is what he is probably referring to.

MR. CORWIN: I will ask that that portion of his answer that is unresponsive be stricken.

(Question read.)

THE COURT: Strike the answer. Read the question to the witness again and please answer the question.

Rephrase your question.

Q Did you send a letter to Mr. Greg that prompted his response in K, POLARLAND K?

A I don't recall whether I sent a letter or not, sir.

Q To Mr. Greg?

A To Mr. Greg.

Q I believe that yesterday you testified that you had a telephone conversation with Great Lakes concerning what you considered to be an erroneous billing of Seven Seas Shipping concerning stevedoring services, is that correct?

A I think we did, sir.

Q Pardon?

A I believe we did.

Q Did you testify yesterday that you had a telephone conversation with Great Lakes concerning what you considered to be erroneous billing?

A I said that yesterday and I just got done saying it now, sir, that we had a telephone conversation with him.

Q Is that correct?

A That is right.

Q You had a telephone conversation with him?

A Yes, sir.

Q Going to page 19 of the deposition, line 21, reading from the deposition of May 1974:

"Q Can you recall if you discussed the shipment with the stevedore at any time on the telephone or in person?

"A Oh, I may have called him and said, "When are you getting the ship out, how is it going", but beyond that I don't think so.

"Q Can you recall which company that might have been?

"A No, I don't recall. I am just going now on what my normal actions would be."

Did you give those answers to those questions?

A Yes, sir, I would have.

Q And your recollection concerning telephone conversations is more accurate now than it was approximately 2 years ago?

A I had quite a chance to recall it, yes, sir.

Q In your discussion yesterday or your testimony yesterday when you were discussing this invoice that you had talked to Seven Seas about, do you recall which invoice that was? Was that invoice 7095? Do you recall what invoice that was?

MR. SANFILIPPO: I object to the form of the question expecting this witness to remember an invoice by an invoice number.

THE COURT: Show him the invoice if you have it, please.

Q This is a different copy than shown yesterday.

MR. SANFILIPPO: Here is the copy marked in evidence.

Q This is the one I am referring to. That is Seven Seas P. Is that the invoice you discussed on the telephone?

A Yes, sir.

Q When did you have that discussion approximately, the date?

A My answer would be within a day or two of this paid stamp down here but I can't figure it. I look at it as either 9/21 or 4/21. It can't be 4/21 because it's dated June 9. It must be 9/21 and it would most likely be when this invoice came to me and I called them and said, "Hey, this is not ours, send it where it belongs."

Q I direct your attention to Plaintiff's Exhibit 15. Does the letter refer to invoice 7095?

A To what invoice?

Q Does that refer to invoice 7095 which was marked--

A Yes.

Q Yes?

A Yes.

Q Doesn't that indicate that Mr. Reynolds had a telephone conversation with Great Lakes International?

A Yes.

Q Doesn't that indicate that Mr. Reynolds was going to expedite payment of invoice 7095?

A Yes, it does.

THE COURT: Is that in evidence?

MR. CORWIN: Yes, your Honor.

THE COURT: Let me see it, please.

Where is invoice 7095?

MR. CORWIN: We're referring again to the deposition in May of 1974, I would like to read a question and answer that was given and ask you if they were accurate.

MR. SANFILIPPO: Where is that?

Q Page 22, line 16:

"Q Did you receive any bills or invoices from the stevedores in connection with the shipment?

"A I don't recall any. I would say no.

"Q Could you look through your file to make sure?

"A I was looking a moment ago to see if I could find what stevedore it was and I didn't see any.

"Q You didn't see anything there?

"A No.

"Q Do you have any correspondence with you between yourself as Seven Seas and Nimpex that relates to this shipment?

"A Nothing other than the booking note.

"Q No correspondence?

"A No.

"Q Any Telexes, any telegrams with Nimpex prior to the signing of the booking note?

"A No, we would only have telephone calls or something like that to see if there were any changes in shipping."

Did you give those answers to those questions on the occasion of you deposition?

A Yes, sir.

Q Are they accurate?

A Yes, they are.

Q They are accurate?

A Yes.

Q You had no invoices from Great Lakes International?

A I think you were asking me, if I recall now -- I think you were asking me -- I had a bunch of papers in front of me and you were asking me there and I had nothing. That is why I said we were looking a minute ago.

Q I am asking if the answers I just read that you gave at that time are accurate.

MR. SANFILIPPO: At this time or at that time?

MR. CORWIN: Right now.

A Well, the answer is not accurate. We do now have a lot of paper that has come up since then.

Q In other words, at that time the paper existed then but you did not -- you said there wasn't any, is that correct?

A I think as of the time you people had just caught me returning from Europe and put me on the witness stand and you understood that and so did Mr. Goodenough here, that we were on short notice on this thing and we were going by memory more than anything else.

Q Did you give this answer to this question, referring to page 5, line 10, of the deposition:

"Q Captain, have you examined the record of Seven Seas concerning the SS POLARLAND?

"A I have glanced through the file, yes."

A The Seven Seas file, yes, sir, that is correct.

Q And none --

A You are asking me for stuff from Nimpex, if I understand you right?

Q No, that is not correct.

A Then I misunderstand you.

Q I will go back and read again.

Page 22, line 16:

"Q Did you receive any bills or invoices from the stevedores in connection with the shipment?

"A I don't recall any. I would say no.

"Q Could you look through your file to make sure?

"A I was looking a moment ago to see if I could find what stevedore it was and I didn't see any.

"Q You didn't see anything there?

"A No.

"Q Do you have any correspondence with you between yourself as Seven Seas and Nimpex that relates to this shipment?

"A Nothing other than the booking note.

"Q No correspondence?

"A No."

Do you have any or are there any invoices that you received from the stevedore?

A Your question, sir, at that time was the papers laying in front of me and that is what we looked at and those are the answers I gave then. I didn't have any with me at that time and I didn't have any at that time with me.

Q In other words, you didn't comply with the notice that I read earlier?

A I brought what I could hurriedly bring, yes, sir.

B36 Q You didn't recall any of these letters that you received that are marked in evidence today, for instance K, which you looked at before which was addressed to you from Mr. Greg and which refers to your letter?

A No, I didn't recall that.

Q You didn't recall the conversations that you recall now concerning problems in billing that you have said that you had with the stevedore?

A Yes, I do recall.

Q You did not at that time recall?

A No, I didn't.

Q Did Mr. Reynolds leave your employment at some time?

A Yes, he did.

Q Who took his place or took over his duties?

A No one.

Q No one?

A No one.

Q Did you have a Mr. Mazzella in your employ?

A No, that is in Nimpex' employ.

Q Mr. Mazzella was in Nimpex' employ?

A Yes, sir.

Q I believe you heard yesterday the testimony concerning the type of damage that the plaintiffs here contend was sustained. Do you recall hearing testimony as to the type of damage that plaintiffs claim was sustained by the coils?

A By the plaintiff, who do you mean?

Q I mean Mr. Goodenough's client, Travelers

Indemnity.

A I heard the testimony about ovalized and pear shaped coils, yes.

Q And buckling and denting damage, packaging, do you recall testimony to that effect, gear markings?

A Yes, I do.

Q Is that type of damage handling damage?

MR. SANFILIPPO: I object to the line of questioning.

THE COURT: What damage?

THE WITNESS: The second type, packaging, gear marking.

MR. SANFILIPPO: I object to the question. It's an improper cross-examination of this witness.

Why does he cross-examine on what somebody else testified to and what this witness heard?

THE COURT: The witness has personal experience.

MR. SANFILIPPO: Is he making him his own witness?

THE COURT: It doesn't matter under the rules if he makes him his own witness or not.

Q Is that handling damage, gear marking, things like that?

A You say gear marking. I don't recall that he testified to gear markings.

Q Let me ask you.

A The type of damage that I am familiar with would be broken bands, envelopes coming uncanned, telescoping of coils, ovalization, pear shaped, buckled coils, unwrapped coils, gear damage by sling marks or by fork-lift trucks or magnets where they stowed eye to the sky or horizontal, that type of damage can be anywhere from the plant to the recipients warehouse, yes. That can be called handling damage.

Q Getting back to Mr. Reynolds, he did not sign other bills of lading, is that correct, other than your Seven Seas form and other than the bills of lading which we have marked Plaintiff's 21A and B?

A I think he just testified that he would be receiving other bills of lading other than Seven Seas. It's customary in the trade to assist other steamship offices throughout the world. We don't have offices all over and we exchange that courtesy, yes, where needed, on authority from the people that we do it for.

Q I will ask that the portion of his answer that is unresponsive --

THE COURT: I will let it stand. Put the next question.

MR. CORWIN: If I might have a moment, your Honor.

THE COURT: Do you have any other questions to put to the witness. If you do, please put them, and if not conclude the examination.

MR. CORWIN: I will conclude, your Honor.

THE COURT: Mr. Goodenough, to you have any questions?

MR. GOODENOUGH: Yes, sir.

CROSS-EXAMINATION

BY MR. GOODENOUGH:

Q Capt. Jones, for a moment I would like to go back to your deposition taken on the 28th day of May 1974, at page 13. Do you recall this question being put to you and your giving the following answer, line 4:

"Q You didn't book, that is Seven Seas didn't book the other cargo for the POLARLAND?

"A I have no recollection of ever booking on the POLARLAND at that time, no."

Do you recall that question and giving that answer?

A Not the way you put it to me. What were the questions before that?

Q At page 12, line 21:

"Q Captain, do you know what other cargo was shipped aboard the SS POLARLAND at the same time these three Nimpex shipments were put aboard?

"A I think Ferrostahl had the rest of the ship. If there were other cargos on there it would be Ferrostahl's records and not mine."

Do you recall that question and that answer?

A Yes, I do.

Q If I were to pose the same question to you today would you still give us the same answer?

A Yes, I would give you the same answer except with the fact that we would load the rest of the ship. That I didn't recall at that time.

Q Seven Seas booked the full reach of the ship then?

A Not the full reach of the ship, the rest of the cargo in Cleveland.

Q You booked all the cargo that was put aboard the ship at Cleveland?

A Right, with Ferrostahl.

Q Would that be shown on this manifest that is in evidence as Seven Seas N?

A Yes, sir.

Q And this would be the sum total of all the cargos booked by Seven Seas at Cleveland on board the SS POLARLAND?

A This would be the sum cargo that was loaded on board the POLARLAND in Cleveland booked by Seven Seas with Ferrostahl, yes.

Q Capt. Jones, I show you Seven Seas Exhibit T. Is that not an invoice on Seven Seas' letterhead to Philipp Brothers?

A Yes, sir.

Q What is this invoice for, Captain?

A It's for the ocean freight.

Q For what cargo?

A For cargo loaded on the POLARLAND.

Q Where?

A In Cleveland.

Q Was it carried on the POLARLAND on the same voyage as the Nimpex shipment?

A I am not sure it's on the same shipment. It seems to me like too much tonnage on the ship then if it's total. You are talking 11 thousand tons there and if I recall, Nimpex had 6 thousand tons. The ship couldn't carry that much.

Q Sir, perhaps if you were to look at Seven Seas' Exhibit S which is an invoice Seven Seas to Nimpex and I address your attention to the vessel and the voyage. Are they identical, sir?

A These two invoices are for the same voyage, yes. It says it up here.

Q I also address your attention to the manifest.

Does it show the Philipp's cargo?

A It shows Socomet's cargo which is Philipp's.

Q Socomet is Philipp's cargo?

A Yes.

Q So Philipp's cargo --

A The same guy, yes. I thought we had 6 thousand tons. I see we only had 3 thousand tons there. So now it makes sense to me.

Q Captain, I understand your testimony now that Seven Seas did have a stevedoring contract at Cleveland?

A Seven Seas had a stevedoring contract at Cleveland if Seven Seas had cargo to be booked or loaded at Cleveland. We had a stevedore.

Q In 1970 did Seven Seas have a stevedoring contract at any other U.S. port?

A I don't believe so. I think we had a verbal arrangement, an oral contract with Detroit Harbor Terminals and we would have had something similar with Rogers Terminal.

Q Where is Rogers Terminal?

A In Chicago, sir.

Q No other port?

A No, we wouldn't have had, not to my knowledge. I don't recall. Erie may have wanted something from us, I don't know.

Q Capt. Jones, are you in the habit of reading contracts carefully before you affix your signature to it?

A Most generally I do.

Q Captain, I show you this paper and ask you to look at the signature on the bottom. Do you recognize that signature?

A I sure do.

Q Whose signature is it, Captain?

A Mine.

B37 Q What does the document refer to?

A The agreement between Seven Seas Shipping Corporation and Holt Hauling & Warehousing System.

Q Where are they located?

A In Philadelphia, Camden, New Jersey.

Q So Seven Seas did have other stevedoring contracts?

A Not on the Great Lakes. You said Great Lakes.

Q I said in the United States.

A I am sorry, I didn't understand that. I understood Great Lakes. Please rephrase the question. Read the question back.

(Question read.)

A I understood it to be the Great Lakes.

MR. GOODENOUGH: I would ask this document be admitted in evidence.

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MR. SANFILIPPO: I have no objection.

MR.CORWIN: No objection.

xx (Plaintiff's Exhibit 23 received in Evidence.)

Q Capt. Jones, if I understand your testimony yesterday concerning appointment of agents at Cleveland on behalf of Seven Seas Shipping, Seven Seas had appointed World Shipping Incorporated as their agent at Cleveland?

A Not on behalf of Seven Seas for this ship, no. Seven Seas had World Shipping as its agents in Cleveland, Toledo, Erie, etc. But Seven Seas instructed Ferrostahl under this contract to use World Shipping in Cleveland. Ferrostahl would have the agent, not Seven Seas.

Q So then World Shipping was not Seven Seas' agent in Cleveland?

A If I answer the question the way you said I am not right. World Shipping is our general agent in Erie, Cleveland, Toledo and other ports near Cleveland but in this particular instance Ferrostahl was instructed under our contractual arrangements to appoint World Shipping as their agents in Cleveland.

Q Captain, I ask you to look at Exhibit 21A, 21B and at the bottom it says, "World Shipping Incorporated as agent only." Whose agent did they act --

A Ferrostahl.

Q Ferrostahl?

A Yes, sir.

Q J. Reynolds signed this bill of lading, is that correct?

A On the instructions of World Shipping, yes, sir.

MR. CORWIN: I object to that answer and the portion of it that is unresponsive.

THE COURT: Strike out the latter part. The question was as counsel put it.

Q J. Reynolds was assistant to the president of Seven Seas Shipping, was he not?

A That is the title he used, yes.

Q And you are the president of Seven Seas and you were at the time of this shipment?

A Yes, sir, I believe I was.

Q Captain, would you briefly describe some of the functions that Mr. Reynolds performed in his capacity as assistant to the president of Seven Seas?

A Anything I asked him to do that would assist me.

Q Could he sign letters, correspondence?

A He could send Telexes, he could write letters, he could sign them, yes.

Q Was he authorized to sign checks?

A No.

Q He was authorized to sign bills of lading that were on Seven Seas' printed form?

A Yes, sir.

Q And in so doing he would bind Seven Seas?

A That is correct, sir.

Q But he was not so authorized to sign uniform bills of lading such as the type used in the shipment in question on behalf of Seven Seas?

A No, sir, not on behalf of Seven Seas.

Q But it would not surprise you, Captain, if J. Reynolds had signed other bills of lading on behalf of World Shipping?

A No, it wouldn't surprise me.

Q Captain, I show you 3 bills of lading, 4 bills of lading, endorsed on the back by Nimpex International, a signature that appears to be Martin D. Resnick, a further endorsement on the back which appears to be Borschmans Thoumsin for Fabrique de Fer De Maubeuge. On the front of the bills of lading we see World Shipping Incorporated as agent only and the signature J. Reynolds.

In your opinion, is that signature the same John Reynolds that was your assistant?

A Yes, sir.

MR. SANFILIPPO: I object to these questions. These are documents that are not in this case. There is no basis or foundation for their being brought before the captain to be questioned upon them. They are on different shipments perhaps associated with this shipment, perhaps not, I don't know.

THE COURT: Overruled.

A It's his signature.

Q It is his signature?

A Yes.

MR. GOODENOUGH: I would ask these be marked for identification. That would be for the limited purposes of the signature on the bottom, your Honor.

xx (Plaintiff's Exhibit 24 marked for Identification.)

MR. SANFILIPPO: I have the same objection to their being introduced in evidence.

MR. GOODENOUGH: I would ask that they be received in evidence.

THE COURT: Received.

xx (Plaintiff's Exhibit 24 received in Evidence.)

Q Captain, you testified earlier that you read carfully all contracts that you sign, am I correct?

A I negotiate most of them and read them before I sign them, that is correct.

Q Captain, I would like to address your attention to Plaintiff's Exhibit 14 marked in Evidence and I would address your attention to the description of Seven Seas which is recited at the caption of the document.

Would you read that description, Captain.

A "Carriers."

Q Captain, I would address your attention to this same document at page 5 under the caption "Other conditions." At paragraph 1 would you read what is recited there, sir.

A "Vessel to be consigned to carrier's agent at both ends."

Q What does that mean, Captain?

A That means that whoever the carrier of this cargo is has a right to appoint their agents.

Q Does he have a right or a duty under this contract?

A He has a duty. They would be the agents.

Q We have defined the carrier in the contract at the preamble as Seven Seas Shipping Corporation of New York.

A Right.

MR. SANFILIPPO: The contract speaks for itself. Counsel is qualifying the statements.

THE COURT: He is asking questions about it.

MR. SANFILIPPO: In his questions he is qualifying the statement which speaks for itself here.

THE COURT: I don't understand what you mean by he is qualifying. He is putting the question based on the document.

Proceed, please.

Q Captain, you stated that according to the first paragraph of page 5 the carrier had a duty to appoint an agent at both ends. I assume that to be the port of loading and again the port of discharge, is that correct?

A That is right, sir.

Q Captain, who was Seven Seas' agent at Cleveland for the purposes of fulfilling this contract?

A We had no agent in Cleveland for the purpose of fulfilling this contract, sir.

Q Captain, who were your agents at Antwerp for the purposes of fulfilling this contract?

A We had no agents at the Port of Antwerp for fulfilling this contract.

Q Captain, when you negotiated this contract with Nimpex did you then have a present intent to fulfill the obligations under that contract?

A This is one of the reasons we had to have that clause in there so that with my booking arrangement wherein Ferrostahl was the agent, I had to protect that in there where we would appoint the agents.

MR. GOODENOUGH: I move to strike that answer as not being responsive.

THE COURT: Strike the answer and read the question to the witness again.

(Question read.)

A I don't know what you want me to answer.

Q It seems to me a plain yes or no would be in order.

A You mean am I going to carry out this contract?

Q Did you have a present intent to carry out that contract when you signed it?

A Yes, I did

Q Captain, I would now show you 4 bills of lading on the back bearing the mark Nimpex International, the signature of Martin Resnick, and each bearing the mark Boschmans Thoumsin and their signature and on the front bearing a signature that appears to be J. Reynolds.

A Right, sir.

Q Would you agree that the signature on each is that of Mr. Reynolds?

A That is correct.

Q Assistant to the president of Seven Seas Corporation?

A That is correct.

Q The bills of lading in question contain a type-written portion above Mr. Reynolds' signature. Would you recite to the Court what that says?

A "Texas Transport & Terminal as agents only by the authority of the Master."

B38 Q And then Mr. Reynolds' signature?

A Right, for Texas Transport Terminal.

Q Do you, of your own knowledge, know Mr. Reynolds to be the agent at New York for Texas Transport Terminal?

A He was in that particular case, sir, acting for Texas Transport, sir.

MR. GOODENOUGH: I ask this be marked for identification.

xx (Plaintiff's Exhibit 25 marked for Identification.)

MR. SANFILIPPO: With regard to Exhibit 25, your Honor, there is a notation that it is subject to the charter party between Ferrostahl and Seven Seas and also to a charter party between Schulte Bruns and Messrs. H. Glanr & Company, the contents of which we don't know, and we don't know what the implication of that additional charter party is.

MR. GOODENOUGH: Plaintiff is only offering the documents for the purposes of the signature on the bottom and the purported agency of that signature to Texas Transport Terminal.

THE COURT: It will be received for that limited purpose.

xx (Plaintiff's Exhibit 25 received in Evidence.)

Q Captain, at the time of the voyage of the POLARLAND from Cleveland in May 1970, it is my understanding that World Shipping Incorporated was not the agent of Seven Seas Shipping Corporation, is that correct, sir?

A For the POLARLAND?

Q For the POLARLAND.

A For the POLARLAND they were not Seven Seas' agents, that is correct.

Q If you know, sir, was Texas Transport & Terminal an gent for Seven Seas Shipping Corporation for the purposes of the voyage on the HW SCHULTE?

A They were not. Ferrostahl's agent.

Q They were Ferrostahl's?

A Yes, sir.

Q On or about the 11th of March 1975, Captain, did you receive a carbon copy of a letter from Texas Transport & Terminal Company Incorporated which was addressed to Messrs. Donovan, Donovan, Maloof & Walsh concerning the voyage of the HENRIETTE WILHELMINE SCHULTE from Philadelphia and the agency contract that it had with Seven Seas?

A Is your question am I aware of it?

Q I am asking did you receive a copy of a letter.

A I don't recall.

Q I will show you a letter and ask you if you ever received a copy of it?

A I don't recall it.

xx (Plaintiff's Exhibit 26 marked for Identification.)

MR. SANFILIPPO: Your Honor, I will object to this. There is no foundation for this document. The witness does not recall it. The contents of it would have to be examined closely before it can have any bearing on this action. We know that it's on the letterhead supposedly from Texas Transport but we do not know why it was sent or how.

MR. GOODENOUGH: This is for purposes of impeaching the witness, your Honor.

THE COURT: The witness states he doesn't recall receiving a copy of it.

MR.GOODENOUGH: On the bottom of the letter it indicates a carbon copy was sent to Seven Seas Shipping Corporation.

THE COURT: It doesn't prove that he received it. Objection sustained.

Q Captain, I would like to call your attention once again to Plaintiff's Exhibit 14, the booking note which is in evidence. On the first page next to the caption Freight Rate, there is an indicationg of the freight to be paid by

Nimpex to Seven Seas. What does that read, sir?

A $11 per metric ton free out, 100 percent of the freight to be prepaid on bills of lading weighing and exchanged for release bills of lading marked freight prepaid. Freight payable in New York in U.S. currency.

How much do you want?

Q Is that the same freight rate that Seven Seas was called upon to pay to Ferrostahl for the time charter of the vessel from Ferrostahl?

A You mean under the freight contract?

Q Under the charter party agreement.

A Under the freight contract I think it was about one dollar less.

Q I ask you to refer to Exhibit 13.

A The freight rate there would be $10.25, so it's a 75-cent differential.

Q On the basis of this dual booking notes or charter parties or however we may term them, Seven Seas realized the profit of 75 cents per ton?

A We realized a gross income of 75 cents, yes.

Q Once again, Captain, I ask you to address your attention to the conduct of Mr. J. Reynolds in his signing of bills of lading. At no time was his signature to bind Seven Seas Shipping Corporation, is that correct?

A In relation to what, sir? He signed many documents for Seven Seas and he signed many documents for other agents on their instructions.

Q I refer to 21A and B, 24 and 25.

A On that one he would have had instructions from World Shipping to sign it. On this one here he would have had instructions for Texas Transport Terminal as agents for Ferrostahl to sign it and Texas Transport, our volunteers, are also our general agents down in the Coast and the Gulf.

Q And in Philadelphia?

A And in the Gulf too, yes. They are our general agents.

MR. GOODENOUGH: No further questions.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. SANFILIPPO:

Q Captain, under either of the charter parties or any document you know of, did Seven Seas have the authority to sign bills of lading on behalf of the Master of the ~~Ferrosta~~hl?, [illegible]

MR. CORWIN: Excuse me, your Honor, I didn't understand that question.

A Neither do I.

Q Did Seven Seas have authority from Ferrostahl to sign any bill of lading for cargo loaded on the POLARLAND?

A No, sir, we did not.

MR. SANFILIPPO: That is all the questions I have.

RECROSS-EXAMINATION

BY MR. CORWIN:

Q You didn't speak with Texas Transport about Mr. Reynolds signing bills of lading, did you, yes or no?

A Yes or no, or do you want the truth?

Q Did you speak to Texas Transport about Mr. Reynolds signing bills of lading?

A I can't answer that in the way it's put.

Q You did not speak to Texas Transport about Mr. Reynolds signing bills of lading, did you?

A I talked to Texas Transport about signing bills of lading in New York, yes.

MR. CORWIN: I ask that be stricken as unresponsive.

THE COURT: I will let it stand. You may pursue it further though. If you want to ask him a question with respect to those specific exhibits, do so.

Q You have no personal knowledge of conversations between Mr. Reynolds and Texas Transport concerning the signing of the bills of lading which have been marked as Plaintiff's 25, is that correct?

A I didn't hear your question, I am sorry.

Q You do not have any personal knowledge of any telephone conversations or discussions between Mr. Reynolds and Texas Transport concerning Plaintiff's Exhibit 25, is that correct?

A I have knowledge of the bills up to his signing those bills of lading, yes, sir.

Q Will you answer the question, please.

A I don't know how else to answer it. There were several discussions concerning these bills of lading and their expediency to get them into the bank. Texas Transport asked us if they sent them up to New York would we be kind enough to sign them on their instructions if and when the cargo is loaded and presented to the carrier. If I had been in the office I might have signed it. My being absent, Reynolds signed it. I don't know whether that answers your questions or not but that is the fact.

MR. CORWIN: I ask that the answer be stricken as unresponsive.

THE COURT: I will allow it to stand. You may pursue it further if you have a specific question in mind.

MR. CORWIN: The question I have is did Mr. Reynolds talk with Texas Transport about signing these bills of lading? That is the question that I have asked before and you haven't answered it yet.

THE COURT: Do you know if he talked with anybody in Texas Transport about signing the bills of lading?

B39

THE WITNESS: I know, sir, that there were many discussions with Reynolds and me both talking with Texas Transport about this shipment being loaded and getting the bills of lading into the bank, yes, sir, many conversations on that.

MR. CORWIN: I don't think he is answering the question and I ask that that be stricken. I will drop it.

MR. SANFILIPPO: That answer is responsive to the question. He stated there were many conversations.

THE COURT: The record will indicate whether or not it's responsive. No other questions?

MR. CORWIN: No, your Honor.

MR. GOODENOUGH: Two more questions, your Honor.

RECROSS-EXAMINATION

BY MR. GOODENOUGH:

Q In response to Mr. Corwin's last question you stated that you know there were many conversations between yourself, Mr. Reynolds and Texas Transport concerning the SCHULTE bills of lading marked 25 and that was because there was some urgency to get them to the bank.

A Nimpex needed the bills of lading to get them into the bank before the end of the week. There is a great deal of money involved in the shipment of cargo. We were expediting them on behalf of Nimpex with Texas Transport.

Q If the cargo was loaded in Philadelphia and Texas Transport Terminal is situated in Philadelphia why, if you know, are the bills of lading signed in New York by Mr. Reynolds and not at Philadelphia by Texas Transport?

A The letter of credit is in New York. The letter of credit where these bills of lading is going to be cashed is in New York and I don't know what day of the week it was but it does make a difference on whether you get it in today or tomorrow for the interest on it and the money. Not only in our business but in all steamship agencies we exchange this courtesy of issuing or signing bills of lading for other agents.

Thousands and thousands of dollars are involved in a letter of credit and it's an expedient factor to get this bill of lading into the bank. It's a custom of the trade, no other answer for it.

MR. GOODENOUGH: No further questions, your Honor.

THE COURT: If there are no other questions the witness is excused.

(Witness excused.)

THE COURT: Call the next witness.

MR. SANFILIPPO: No other witnesses. Seven Seas

OPINION OF WEINFELD, J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Cif4

#6/4779

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TRAVELERS INDEMNITY COMPANY,

Plaintiff,

-against-

SS POLARLAND, her engines, boilers, etc., D/S A/S VESTLAND, RICH. AMLIE & CO., A/S, and SEVEN SEAS SHIPPING CORP.,

Defendant.

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72 Civ. 3779

OPINION

U.S. DISTRICT COURT
FILED
AUG 17 1976
S.D. OF N.Y.

DONOVAN, DONOVAN, MALOOF & WALSH, ESQS.
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RICHARD A. CORWIN, ESQ.
Of Counsel

EDWARD WEINFELD, D. J.

Plaintiff, Travelers Indemnity Company ("Travelers") seeks as subrogee to recover $30,802.93 it paid to an assured for damage to a shipment of steel.

Nimpex International Inc. ("Nimpex") was the seller and shipper of 299 coils of cold rolled steel sheets of which Fabrique De Fer De Maubeuge ("Fabrique De Fer") of Louvroil, France, was the ultimate purchaser and consignee. The shipment, destined for delivery at Antwerp, Belgium, was insured by Travelers under an Open Marine Cargo policy in which Nimpex was named as the assured. Nimpex, as authorized under that type of policy, issued a certificate covering the shipment.(1) This certificate was endorsed in blank by Nimpex and together with other shipping documents was negotiated in due course to and acquired by Fabrique De Fer. Following the outturn of the steel cargo at Antwerp, Fabrique De Fer filed a claim with Travelers for damages to a portion of the shipment, which

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(1) The certificate is a negotiable document which is endorsed and passes with documents of title including bills of lading and invoices.

Travelers paid.[2]

The defendants from whom recovery is sought are SS Polarland, the vessel which carried the cargo from Cleveland, Ohio, to Antwerp; its owner D/S A/S Vestland ("Vestland") and Seven Seas Shipping Corp. ("Seven Seas"), the charterer of the vessel. The vessel had been bareboat chartered by Vestland, its owner, to Molena Trust Incorporated ("Molena") which in turn time chartered it to Ferrostaal A.G. of Essen, Germany.[3] The latter, as disponent owner, entered into a Uniform General Charter with Seven Seas as charterer, whereunder the SS Polarland was nominated to carry steel cargo from ports in the United States to European ports. That charter party provided that the cargo be "loaded, stowed, lashed and discharged by Charterers [sic] Stevedores free of expense to the vessel."

Seven Seas also entered into an agreement with Nimpex wherein Seven Seas was described as carrier and Nimpex as shipper. The agreement provided that a quantity

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(2) Originally the action was commenced by Nimpex, but during trial when it appeared that Travelers was the real party in interest it was substituted as plaintiff. See Link Aviation, Inc. v. Downs, 325 F.2d 613 (D.C. Cir. 1963).

(3) The complaint was dismissed as to Ferrostaal for lack of jurisdiction.

of steel coils "which the Shippers agree to ship and the Carriers agree to carry" would be carried from Cleveland to Antwerp on board the SS Polarland. Seven Seas would profit one dollar a gross ton, the difference between the freight rate it was required to pay to Ferrostaal and what Nimpex paid to Seven Seas under the respective agreements.

The 299 coils of cold rolled steel sheets sold by Nimpex to Fabrique De Fer were delivered by railroad car from a mill in Sharon, Pennsylvania to the loading port, Cleveland, Ohio. Great Lakes International Corp. ("Great Lakes") was the exclusive stevedore at the Cleveland port for Seven Seas. Upon receipt of the shipment at the Cleveland terminal, Great Lakes issued dock receipts for the coils. The only exceptions noted by Great Lakes on the dock receipts with respect to the condition of the cargo related to twenty-six (26) coils, as follows:

> Dock Receipt No. PC 752732 covering 10 coils - "coil wrappings rusty + chaffed - condition contents unknown"
>
> Dock Receipt No. PRR 387050 covering 8 coils - "surface rust, paper covering torn, uncovered car"
>
> Dock Receipt No. PRR 387151 covering 8 coils - "S/R P/C/T, OTC."

Great Lakes thereafter handled, loaded, stowed, lashed and chocked the coils aboard the SS Polarland.

World Shipping Inc. was the general agent of Seven Seas at the port of Cleveland. Bills of lading dated May 12, 1970 covering the shipment were signed by J. Reynolds, who was Assistant to the President of Seven Seas, under the words "World Shipping Inc. as Agent only by Authority of the Master." The bills of lading acknowledged receipt of the steel shipment on board the SS Polarland at Cleveland, Ohio, in good order and condition except that each was claused with the notation:

> "Outer wrappers athmosperically [sic] rust stained. Outer wrappers slightly damaged. Some bands damaged and/or missing."

Whatever the merits of the parties' respective psoitions, it is clear that their rights and duties are governed by the Carriage of Goods by Sea Act ("Cogsa").(4) The plaintiff to establish a prima facie case must prove that the shipment was delivered aboard the SS Polarland at

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(4) 46 U.S.C. § 1300 et seq. See Demsey & Associates v. S.S. Sea Star, 461 F.2d 1009, 1014 (2d Cir. 1972); Iligan International Corp. v. S.S. John Weyerhaeuser, 372 F. Supp. 859, 865 (S.D.N.Y.), aff'd and remanded sub nom. Iligan Integ. Steel Mills, Inc. v. S.S. John Weyerhaeuser, 507 F.2d 68 (2d Cir. 1974), cert. denied, 421 U.S. 965 (1975).

Cleveland, Ohio, in good order and condition except for the dock receipt notations as to the twenty-six (26) coils and the claused exceptions on the bills of lading referred to above, and that when delivered the damage sustained was of a nature, source and extent different from that noted on the dock receipts and bills of lading. Thereupon the defendants, to avoid liability, have the burden of establishing either that the damage was not due to their negligence or that it was the result of one of the "excepted causes" of Cogsa.(5) The bill of lading is prima facie evidence of the receipt by the carrier of the goods as therein described.(6)

Upon the vessel's arrival at Antwerp on or about June 6, 1970, and following inspection by independent surveyors designated by vessel and cargo interests, most of the coils in the shipment were found damaged. The surveyor appointed by the cargo interests testified at the trial. He was of considerable experience and his expertise was acknowledged by the defendants. He had inspected the shipment in the hold of the ship, and surveyed it in a closed hangar on a pier over a five-day period following discharge. The surveyor found that the damage fell within two categories. Sixteen (16) coils were heavily ovalized (7) and permanently deformed. These coils were rejected by the consignee as unfit for their intended use and sold for salvage at a loss of $10,940.80. A second group of one hundred eighty-two (182) coils had been dented, bent, scratched, cut, waved, severely rusted, and slightly ovalized. These coils were found depreciated in value and an allowance in the sum of $19,862.13 was made by Travelers to the consignee, who agreed to accept those coils upon that allowance. The surveyor was of the opinion that the sum so paid to Fabrique De Fer for its claim was fair and reasonable.

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(5) 46 U.S.C. § 1304 (2), (3). _See also_ Nichimen Co. v. M.V. Farland, 462 F.2d 319, 325 (2d Cir. 1972); Demsey & Associates v. S.S. Sea Star, 461 F.2d 1009, 1014 (2d Cir. 1972); _cf._ Mamiye Bros. v. Barber Steamship Lines, Inc., 241 F. Supp. 99, 109-12 (S.D. N.Y. 1965), _aff'd_, 360 F.2d 774 (2d Cir.), _cert. denied_, 385 U.S. 835 (1966).

(6) 46 U.S.C. § 1303 (4).

In his view the cause of the damage was twofold: (1) Rough handling during loading and stowage, in that bottom coils were so stowed that they were crushed or ovalized when other coils were dumped on top of them, and (2) during the voyage, when some of the coils on the bottom tier were ovalized under the weight of overstowed coils stacked three high, and other coils were damaged by the shifting of coils in contact with one another. While he could not pinpoint when during the course of the pre-loading and loading handling the damage occurred, the expert was of the view that the packing was adequate and normal for the ocean transit of the coils.

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(7) Ovalized means that a circular coil has been deformed so that it rests on a flat bottom instead of the line of bearing - somewhat similar to a flat tire on an automobile.

The defendants sought to overcome the force of the surveyor's testimony by that of two experts. Neither had observed the actual condition of the coils but each testified in response to hypothetical questions. Their opinion evidence failed to undermine the eyewitness surveyor's testimony. The defendants' experts' theoretical concepts must yield to factual reality. Indeed the defendants' experts acknowledged that it is necessary to see the damaged coils to determine whether they are so ovalized as to render them unacceptable.

Significantly, the defendants failed to offer the testimony of the surveyor representing the vessel's interests who had jointly inspected and surveyed the cargo with the surveyor whose testimony the defendants now challenge. The latter submitted a copy of his written findings dealing with each coil to the vessel's surveyor who neither responded thereto nor took issue with the findings. Seven Seas contends that no inference should be drawn against it because the surveyor had been designated by the vessel defendants and not by it. However, although Seven Seas knew that the surveyor had been a participant in the joint survey, it failed to take or offer his testimony upon the trial. The witness, even though not under the direct control of Seven Seas, was subject to the process of the Court for the taking of his testimony. Since his testimony would upon the facts here presented have been cumulative to the testimony of the surveyor called by plaintiff, the failure of defendants to present his testimony by way of deposition or upon the trial permits an inference that his testimony would have been adverse to Seven Seas as well as to the other defendants.(8)

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(8) See J. Garber & Co. v. S.S. Sabine Howeldt, 437 F.2d 580, 593 (2d Cir. 1971); cf. Armstrong v. Commerce Tankers Corp., 311 F. Supp. 1236, 1242-43 (S.D.N.Y. 1969), aff'd, 423 F.2d 957 (2d Cir.), cert. denied, 400 U.S. 833 (1970).

Defendants contend that some of the damaged merchandise could have been salvaged by a "jacking-up" process. Their evidence on this score was far from persuasive. While the consignee was required to take reasonable action to reduce its damages, "jacking-up" was not feasible considering the nature and extent of the deformity of the heavily ovalized coils. As plaintiff's expert put it, such a procedure would have served to disguise the damage without removing the deformity.

In sum, upon the totality of all the evidence, the Court accepts the testimony of plaintiff's surveyor upon the contested issues. The Court finds that the damage was of a nature and source different from that noted on the dock receipts and bills of lading and that plaintiff's subrogor, the consignee, sustained the damage described which plaintiff paid. The Court further finds that the defendants failed to rebut plaintiff's prima facie case.

The issue remains as to who is liable for the damage.

(a) Seven Seas

The documentary evidence abundantly establishes that Seven Seas was the carrier of the coils and as such was under a duty to properly load, handle, stow and discharge the goods carried.(9) Under the charter party with Ferrostaal, Seven Seas was obligated to load and stow the cargo. That charter party also provided that Seven Seas should appoint its own broker or agent at the port of loading and the port of discharge. The bills of lading were signed for World Shipping Inc., Seven Seas' general agent at the Cleveland port, by J. Reynolds, Assistant to the President of Seven Seas, whose authority extended to anything required to assist the President. Reynolds had authority to sign bills of lading on behalf of Seven Seas on Seven Seas forms. The evidence and contemporaneous events establish that Reynolds was acting within the scope of his authority as an employee of Seven Seas and for and on its behalf in signing the bills of lading.

Additionally, the contract between Seven Seas and Nimpex covering the shipment at issue was prepared by Seven Seas and described Seven Seas as the carrier. Pursuant to the contract, Seven Seas was paid $32,005.36 by Nimpex for ocean freight and seaway tolls, Significantly, a pre-printed portion of that contract which would have made it Nimpex' risk and responsibility to load, stow, lash and chock the shipment was stricken therefrom on instructions of Seven Seas' President. Great Lakes, which was Seven Seas' exclusive stevedore at Cleveland, loaded and stowed the Nimpex shipment aboard the vessel upon the instructions of Seven Seas' President and for and on Seven Seas' behalf. Further, Nimpex had no agreement with Great Lakes or any other stevedore for loading the shipment aboard the vessel.

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(9) 46 U.S.C. § 1303 (2).

The evidence also establishes that Seven Seas held itself out to the public as a carrier. Cargoes of other shippers were carried on the voyage in question, for which Seven Seas collected freight charges from those shippers.

Despite the overwhelming evidence,(10) Seven Seas disclaims that it was the carrier and attempts to negate the clear and plain meaning of documents, its own acts and conduct and those of its agents with respect to the shipment. This it sought to do by the oral testimony of its President upon the trial. He denied that Great Lakes loaded the shipment aboard the vessel at the direction of or for the account of Seven Seas; he claimed it did so for Nimpex. He denied that World Shipping was Seven Seas' agent at Cleveland for the purpose of this shipment; he claimed that World Shipping was acting for Ferrostaal. He denied that Reynolds signed the bills of lading on behalf of Seven Seas; he claimed that Reynolds did so on behalf of World Shipping. Finally, he claimed that Ferrostaal, and not Seven Seas, was the carrier of the cargo. The manner of his testimony and his demeanor was such that during the course of his testimony this Court stated that the teaching of Dyer v. MacDougall (11) would come into play. A post-trial word-by-word reading and study of his testimony, as well as of the entire trial record and all relevant exhibits, confirm the Court's initial evaluation of this witness' credibility. He was glib and evasive, oft times with an agility to give an anticipatory answer designed to exonerate Seven Seas of its obligations, of which he was well aware. At times his answers were in utter disregard of compelling documentary proof and of established relationships; at other times they were in flat contradiction of his own prior statements and admissions. This Court rejects the substance of his testimony as a palpable effort to escape the legal consequences of various agreements which Seven Seas entered into with the respective parties.

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(10) See Joseph L. Wilmotte & Co., Inc. v. Cobelfret Lines, S.P.L.R., 289 F. Supp. 601 (M.D. Fla. 1968); cf. Pendleton v. Benner Line, 246 U.S. 353, 355 (1918).

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(11) 201 F. 2d 265, 268-69 (2d Cir. 1952).

Accordingly, Seven Seas, as the carrier of the cargo, is held liable for the damage caused by the improper loading and stowage.

(b) The vessel, SS Polarland

The vessel also is liable for the cargo damage and a maritime lien may be enforced against it. The fact that the vessel was operated under the charter to Seven Seas does not affect the liability of the vessel.(12) Nor is her liability affected by the fact that the master personally did not sign the bills of lading; neither does it matter that Reynolds in signing the bills of lading acted on behalf of Seven Seas, the charterer, or, as Seven Seas has contended, on behalf of Ferrostaal, the disponent owner of the vessel. Once the vessel set sail with its cargo, this constituted a ratification by the master of the bills of lading covering cargo aboard.(13)

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(12) Demsey & Associates v. S.S. Sea Star, 461 F. 2d 1009, 1014 (2d Cir. 1972); Pioneer Import Corp. v. The Lafcomo, 49 F. Supp. 559, 561-62 (S.D.N.Y.), aff'd, 138 F.2d 907 (2d Cir. 1943), cert. denied sub nom. Black Diamond Lines, Inc. v. Pioneer Import Corp., 321 U.S. 766 (1944).

The vessel, having been cast in rem liability by reason of the acts and conduct of Seven Seas, is entitled to recover from it the amount of the maritime lien against it as well as reasonable counsel fees incurred in the defense of the action.(14)

(c) D/S A/S Vestland, the owner of the vessel

There remains the question of whether Vestland, the owner of the vessel, is also liable in personam. As previously noted, Vestland had bareboat chartered the vessel to Molena, which in turn time chartered it to Ferrostaal, which then entered into the Uniform General Charter with Seven Seas whereunder the vessel was nominated to carry the steel cargo. The charter party between Vestland and Molena provided that Molena would "by its own procurement, man, victual, navigate, fuel and lubricate and supply the vessel . . ."

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(13) Demsey & Associates v. S.S. Sea Star, 461 F.2d 1009, 1015 (2d Cir. 1972). *See also* Tube Products of India v. S.S. Rio Grande, 334 F. Supp. 1039, 1041 (S.D.N.Y. 1971); United Nations Children's Fund v. S/S Nordstern, 251 F. Supp. 833, 836-38 (S.D.N.Y. 1965); The Muskegon, 10 F.2d 817, 819-21 (S.D.N.Y. 1924); The Blandon, 287 F. 722, 723-24 (S.D.N.Y. 1922).

(14) Nichimen Co. v. M.V. Farland, 462 F.2d 319, 330-4 (2d Cir. 1972); A/S Brovanor v. Central Gulf Steamship Corp., 323 F. Supp. 1029, 1033 (S.D.N.Y. 1970).

Vestland entered into no relationship, contractual or otherwise, with Nimpex, the shipper, and in the circumstances of this case cannot be deemed a carrier subject to the responsibilities and liabilities of Cogsa. Nimpex' contract for carriage was exclusively with Seven Seas and not with Vestland, the owner of the vessel. Moreover, Reynolds signed the bills of lading as an employee of and on behalf of Seven Seas and not on behalf of Vestland.

Vestland is not liable in personam for the damages sustained and is entitled to judgment dismissing the complaint against it.(15)

The foregoing shall constitute the Court's findings of fact and conclusions of law. If the parties do not agree as to the amount of counsel fees allowed the vessel, the matter may be noticed for hearing on that issue to be held no later than fifteen (15) days from date. Judgment may be entered accordingly.

Dated, New York, New York
August 17, 1976

United States District Judge

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(15) See Nichimen Co. v. M.V. Farland, 462 F.2d 319, 330 fn. 10 (2d Cir. 1972); Armour & Co. v. Port Morgan S.S. Co., 297 F. 813 (5th Cir. 1924), aff'd, 270 U.S. 253 (1926). See also Associated Metals & Minerals Corp. v. SS Portoria, 484 F.2d 460 (5th Cir. 1973); Demsey & Associates v. S.S. Sea Star, 461 F.2d 1009, 1015 (2d Cir. 1972); Scrutton on Charterparties and Bills of Lading 67 (18th Ed. 1974).

5,30

# United States District Court
for the
Southern District
of
New York

72 Civ. 3779

TRAVELERS INDEMNITY CO.

-vs.-

SS POLARLAND, her engines,
boilers, etc., D/S A/S
VESTLAND, RICH. AMLIE &
CO., A/S. and SEVEN SEAS
SHIPPING CORP.

OPINION

EDWARD WEINFELD, D. J.

FPI ATLANTA—[illegible]—2M—649

11-28

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
SEP 20 1976
S.D. OF N.Y.

--x

TRAVELERS INDEMNITY COMPANY,

Plaintiff,

-against-

S.S. POLARLAND, her engines, boilers, etc., D/S A/S VESTLAND, RICH. AMLIE & CO., A/S and SEVEN SEAS SHIPPING CORP.,

Defendants.

--x

Index No.
72 Civ. 3779 (EW)

JUDGMENT
ORDER

#-26,84~~[illegible]~~

WLH

ESS

This action, having come on for trial before this Court, the Honorable Edward Weinfeld presiding, and the issues of liability and damages having been duly tried and a decision having been duly rendered on August 17, 1976, it is

ORDERED, ADJUDGED AND DECREED that plaintiff, TRAVELERS INDEMNITY COMPANY shall recover of defendants, S.S. POLARLAND and SEVEN SEAS SHIPPING CORP., the sum of $27,862.13 with interest thereon at the rate of 7.5 percent from June 13, 1970 through August 31, 1972, and thereafter at a rate of six percent (6%) from September 1, 1972 to August 31, 1976 for a total of $11,289.89 and $4.58 per day thereafter until entry hereof, plus costs in the sum of $1,892.73, and it is further

ORDERED, ADJUDGED AND DECREED that defendant, S.S. POLARLAND shall recover from SEVEN SEAS SHIPPING CORP., any maritime lien enforced against the S.S. POLARLAND in the amount as set forth above, and it is further

20, 1976

MICROFILM
SEP [illegible]

HC007

ORDERED, ADJUDGED AND DECREED that defendant, S.S. POLARLAND shall recover from SEVEN SEAS SHIPPING CORP., the sum of $10,000.00 for reasonable counsel fees.

Dated: New York, New York
September 17, 1976

SO ORDERED,

Edward Weinfeld
United States District Judge

mA

Judgment Entered
Raymond F. Burghardt 9/21/76
Clerk

We hereby agree to the entry of the above judgment order without further notice.

DONOVAN, MALOOF, WALSH & KENNEDY

By: Charles C. Goodenough
CHARLES C. GOODENOUGH
Attorneys for Plaintiff
161 William Street
New York, New York 10038

KIRLIN, CAMPBELL & KEATING

By:__________________________

Attorneys for Defendant
Seven Seas Shipping Corp.
120 Broadway
New York, New York 10005

WALKER & CORSA

By: Richard A. Corwin
RICHARD A. CORWIN
cag
Attorneys for Defendant
S.S. POLARLAND
25 Broad Street
New York, New York 10004

We hereby waive further notice of the entry of the above judgment order.

KIRLIN, CAMPBELL & KEATING

By: Walter J. Hickey
A member of the firm

Attorneys for Defendant,
Seven Seas Shipping Corp.

SEVEN SEAS NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAVELERS INDEMNITY COMPANY,

Plaintiff,

against

S.S. POLARLAND, her engines, boilers, etc., D/S A/S VESTLAND, RICH. AMLIE & CO., A/S and SEVEN SEAS SHIPPING CORP.,

Defendants.

72 Civil 3779 (EW)

NOTICE OF APPEAL

SIRS:

PLEASE TAKE NOTICE that defendant Seven Seas Shipping Corp., hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment entered herein on September 20, 1976.

Dated: New York, New York
October 19, 1976

Yours, etc.,

KIRLIN, CAMPBELL & KEATING

BY: ____
A Member of the Firm
Attorneys for Defendant
Office & P. O. Address
120 Broadway
New York, New York 10005

TO: DONOVAN, MALOOF, WALSH & KENNEDY
Attorneys for Plaintiff
161 William Street
New York, New York 10038

WALKER & CORSA
Attorneys for Defendant
S.S. POLARLAND
25 Broad Street
New York, New York 10004

WESTERN UNION TELEX 1-26126
TWX 710-581-6091

INVOICE

N.I. 2799

534a

TTX1

NIMPEX INTERNATIONAL INC.

745 FIFTH AVENUE
NEW YORK, N.Y. 10022

PLAINTIFF'S EXH. 1
NIMPEX INVOICE

Inereisen Stahlhandel GMBH
62, Schadowstrasse
Dusseldorf, West Germany

DATE May 12, 1970
RELEASE NO.
YOUR ORDER NO.
Brut For Net

~~xxxxx~~ C.I.F./F.O. Antwerp

TERMS: Letter of credit-Franklin National Bank #U52215 Banque Lambert, Brussels #555.616 Vessel: M.V. Polarland

LBS.	COILS	DESCRIPTION	PRICE CWT DUTY PAID	AMOUNT	TOTAL
Metric Tons		Cold Rolled Coils premier choix-qualite commerciale material non Recuit Non huile. Allowance on width Less zero plus 3/16" Allowance on Thickness: For dimensiones 1 x 1002 plus zero/less 0.008 0.8x 1002 " " " 0.006 0.5x 916 " " " 0.006 Unit weight per coil 5 to 12 tons Packing: Coils packed in oiled paper without skids	per Metric Ton		
1,105.702	117	1 x 1002 MM			
536.805	59	0.8x 1002 MM			
1,071.002	123	0.5x 916 MM			
2,713.509	299		147.52	400,296 85	
		C.I.F./Free Out Antwerp			400,296.85
Marks & Nos Gross Weight Size in MM (Thickness &Width) Coil Number Heat Number Color Marks		Certified True & Correct NIMPEX INTERNATIONAL INC.			

THESE COMMODITIES LICENSED BY THE UNITED STATES FOR ULTIMATE DESTINATION.......... AND FOR DISTRIBUTION OR RESALE IN ANY DESTINATION EXCEPT SOVIET BLOCK, COMMUNIST CHINA, NORTH KOREA, MACAO, HONGKONG, CUBA, DOMINICAN REPUBLIC AND SOUTHERN RHODESIA OR COMMUNIST CONTROLLED AREAS OF VIETNAM AND LAOS UNLESS OTHERWISE AUTHORIZED BY THE UNITED STATES. DIVERSION CONTRARY TO UNITED STATES LAW PROHIBITED.

Dfts' Ex 5 for ID
5-16-74
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MARINE OPEN POLICY No. 1A [illegible]R

PLAINTIFF'S EXH. 2
TRAVELERS MARIN POLICY

OF

The Travelers Indemnity Company

W.B. Brandt & Co., Inc. OCEAN MARINE UNDERWRITERS
ESTABLISHED 1905
77 BATTERY STREET, SAN FRANCISCO, CALIFORNIA 94119

ASSURED 1. THE TRAVELERS INDEMNITY COMPANY, in consideration of premium at the rate or rates hereinafter stated, does insure

NIMPEX INTERNATIONAL INC.

2. For account of whom it may concern.

LOSS PAYABLE CLAUSE 3. Loss, if any, payable to the Assured or order.

GOODS INSURED 4. Upon lawful goods and merchandise of every kind and description consisting principally of

STEEL PRODUCTS.

VALUATION CLAUSE 5. Valued at

(a) SOLD MERCHANDISE.
ASSUREDS SALES INVOICE VALUE PLUS 10%.

(b) UNSOLD MERCHANDISE.
AMOUNT OF INVOICE INCLUDING ALL CHARGES PLUS FREIGHT, PREPAID, ADVANCED AND/OR GUARANTEED, PLUS 20%.

CONVEYANCE CLAUSE 6. Shipped, or to be shipped, under and/or on deck, per

STEAMER AND/OR STEAMERS AND/OR MOTOR VESSELS AND CONNECTING CONVEYANCES BY LAND OR OTHERWISE, BUT EXCLUDING SAILING VESSELS WITH OR WITHOUT AUXILIARY POWER.

GEOGRAPHICAL LIMITS 7. At and from

PORTS AND/OR PLACES WORLDWIDE TO
PORTS AND/OR PLACES WORLDWIDE.

ATTACHING DATE 8. To apply to all shipments made on and after JUNE 1st,1967 by or to the Assured for their account as Principals or as Agents for others, or for account of others with orders to insure, or by others for account of the Assured or in which the Assured may have an interest, provided such orders are given in writing prior to or simultaneous with the sailing of the vessel and prior to any known or reported loss or damage, but excluding any shipments purchased by the Assured on a C.I.F. basis.

PERILS CLAUSE 9. The adventures and perils which the said Company is content to bear and does take upon itself, are: of the seas, fire, rovers, assailing thieves, jettisons, criminal barratry of the master and mariners, and of all other like perils, losses and misfortunes, that have or shall come to the hurt, detriment, or damage of the aforesaid subject matter of this insurance or any part thereof.

SUE AND LABOR CLAUSE 10. In case of any loss or misfortune, it shall be lawful and necessary for the Assured, his or their factors, servants and assigns, to sue, labor and travel for, in and about the defence, safeguard and recovery of the aforesaid subject matter of this insurance, or any part thereof, without prejudice to this insurance; the charges whereof the said Company will bear in proportion to the sum hereby insured.

WAIVER CLAUSE 11. It is expressly declared and agreed that no acts of the Company or Assured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

12. The following warranties shall be paramount and shall not be modified or superseded by any other provision included in this Policy or stamped or endorsed hereon unless such other provision refers specifically to the risks excluded by these warranties and expressly assumes the said risks:-

F. C. & S. WARRANTY (a) Notwithstanding anything herein contained to the contrary, this insurance is warranted free from capture, seizure, arrest, restraint, detainment, confiscation, preemption, requisition or nationalization, and the consequences thereof or any attempt thereat, whether in time of peace or war and whether lawful or otherwise; also warranted free, whether in time of peace or war, from all loss, damage or expense caused by any weapon of war employing atomic or nuclear fission and/or fusion or other reaction or radioactive force or matter or by any mine or torpedo, also warranted free from all consequences of hostilities or warlike operations (whether there be a declaration of war or not), but this warranty shall not exclude collision or contact with aircraft, rockets or similar missiles or with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather, fire or explosion unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purposes of this warranty 'power' includes any authority maintaining naval, military or air forces in association with a power.

Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy."

S. R. & C. C. WARRANTY (b) Warranted free of loss or damage caused by or resulting from strikes, lockouts,, labor disturbances, riots, civil commotions or the acts of any person or persons taking part in any such occurrence or disorder.

WAREHOUSE TO WAREHOUSE CLAUSE 13. This insurance attaches from the time the goods leave the warehouse and/or Store at the place named in the policy for the commencement of the transit and continues during the ordinary course of transit, including customary transhipment if any, until the goods are discharged overside from the overseas vessel at the final port. Thereafter the insurance continues whilst the goods are in transit and/or awaiting transit until delivered to final warehouse at the destination named in the policy or until the expiry of 15 days (or 30 days if the destination to which the goods are insured is outside the limits of the port) whichever shall first occur. The time limits referred to above to be reckoned from midnight of the day on which the discharge overside of the goods hereby insured from the overseas vessel is completed. Held covered at a premium to be arranged in the event of transhipment, if any, other than as above and/or in the event of delay in excess of the above time limits arising from circumstances beyond the control of the Assured.

CRAFT, ETC., CLAUSE 14. Including transit by craft, raft and/or lighter to and from the vessel. Each craft, raft and/or lighter to be deemed a separate insurance. The Assured are not to be prejudiced by any agreement exempting lightermen from liability.

Deviation Clause 15. The insurance shall not be vitiated by any unintentional error in description of vessel, voyage or interest, or by deviation, overcarriage, change of voyage, transhipment or any other interruption of the ordinary course of transit, from causes beyond the control of the Assured. It is agreed, however, that any such error, deviation or other occurrence mentioned above shall be reported to this Company as soon as known to the Assured, and additional premium paid if required.

LIBERTIES CLAUSE TERMINATION OF CONTRACT OF AFFREIGHTMENT 16. In the event of the exercise of any liberty granted to the shipowner or charterer under the contract of affreightment whereby such contract is terminated at a port or place other than the destination named therein, the goods are held covered in terms of the policy at a premium to be arranged until sold and delivered at such port or place, or notice be given to the Company to terminate the policy whichever first occurs; or, if the goods be forwarded to the destination named herein or to any other destination, until arrival at destination (subject to the provisions of clause 13 as to the period covered after discharge overside from the overseas vessel at final port); provided always that no liability shall attach to this policy for loss or damage occurring after the termination of such contract of affreightment and proximately caused by delay or inherent vice or nature of the subject matter insured.

GENERAL AVERAGE CLAUSE 17. General Average and Salvage Charges payable according to United States laws and usage and/or as per Foreign Statement and/or per York-Antwerp Rules (as prescribed in whole or in part) if in accordance with the Contract of Affreightment.

BILL OF LADING, ETC., CLAUSE 18. The Assured are not to be prejudiced by the presence of the negligence clause and/or latent defect clause in the Bills of Lading and/or Charter Party. The seaworthiness of the vessel as between the Assured and the Company is hereby admitted and the wrongful act or misconduct of the shipowner or his servants causing a loss is not to defeat the recovery by an innocent Assured if the loss in the absence of such wrongful act or misconduct would have been a loss recoverable on the Policy. With leave to sail with or without pilots, and to tow and assist vessels or craft in all situations, and to be towed.

GROUNDING CLAUSE 19. Warranted that should the vessel and/or craft ground within the limits of the Columbia and/or Willamette and/or Fraser Rivers and/or tributaries and/or in the Suez Canal and/or Panama Canal and/or Manchester Ship Canal or its connections and/or in the River Mersey above Rock Ferry Slip and/or in any other canals, harbors, or tidal rivers, such grounding not to be deemed a stranding, but underwriters to pay for any damage which may be proved to have directly resulted therefrom.

SHORE RISK CLAUSE 20. Where this policy covers on goods while on any land conveyance or while on docks, wharves or elsewhere on shore the risks insured are fire, lightning, earthquake, cyclone, tornado, typhoon, hurricane, flood, the rising of navigable waters, sprinkler leakage, collision (coming together of cars while coupling not to be deemed a collision hereunder), upset, derailment and any other accident to the land conveyance, aircraft damage, and/or the collapse and/or subsidence of docks and/or wharves and/or bridges and/or viaducts and/or similar structures, and any additional risks which may be specifically insured elsewhere herein.

DELAY CLAUSE 21. Warranted free of claim for loss of market or for loss, damage or deterioration arising from delay, whether such delay be caused by a peril insured against or otherwise, unless the risk of delay is expressly assumed in writing hereon.

CONTRIBUTORY VALUE CLAUSE 22. This Company shall be liable for only such proportion of General Average and Salvage Charges as the sum hereby insured (less Particular Average for which this Company is liable hereunder, if any) bears to the Contributory Value of the property hereby insured.

CONSTRUCTIVE TOTAL LOSS CLAUSE 23. No recovery for a constructive total loss shall be made hereunder unless the property hereby insured is reasonably abandoned on account of its actual loss appearing to be unavoidable, or because it cannot be preserved from actual total loss without an expenditure which would exceed its value when the expense had been incurred.

BOTH-TO-BLAME COLLISION CLAUSE 24. Where goods are shipped under a bill of lading containing the so-called "Both-to-Blame Collision" Clause this Company agrees, as to all losses covered by this insurance, to indemnify the Assured for any amount (up to the amount insured) which the Assured may be legally bound to pay to the shipowners under such clause. In the event that such liability is asserted the Assured agree to notify the Company which shall have the right, at its own cost and expense, to defend the Assured against such claim.

EXPLOSION CLAUSE 25. The risks covered by this Policy are to include loss, damage or expense resulting from explosion howsoever or wheresoever occurring, but it is especially understood and agreed that this wording is not intended to cover any of the risks excluded by the "F. C. & S." and/or "S. R. & C. C." warranties printed elsewhere herein.

EXPLOSION CLAUSE EXTENSION 26. Notwithstanding the provisions of "F. C. & S." Clause contained herein, it is agreed that the risk of explosion, if covered by express provisions of this Policy, is covered howsoever and wheresoever occurring while the interest insured is on shore in the United States (including Alaska, Hawaiian Islands, Virgin Islands, Puerto Rico, and Canal Zone) or while on vessels whose navigation is confined solely to the inland waters thereof, unless caused directly or indirectly by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; or (b) invasion, insurrection, rebellion, revolution, civil war, or usurped power.

FUMIGATION CLAUSE 27. In event of the vessel being fumigated by order of properly constituted authority and damage arises therefrom, this Company agrees to indemnify the Assured for such damage, and the Assured hereby agrees to subrogate to this Company any recourse that they may have for recovery of such damage from others.

RELEASED BILL OF LADING CLAUSE 28. Privilege is hereby given to ship goods covered by this Policy under released or limited liability bills of lading or shipping receipts without prejudice to the insurance hereunder.

LABELS CLAUSE 29. In case of damage affecting labels, capsules or wrappers, these assurers, if liable therefor under the terms of this policy, shall not be liable for more than an amount sufficient to pay the cost of new labels, capsules or wrappers, and the cost of reconditioning the goods, but in no event shall this Company be liable for more than the insured value of the damaged merchandise.

REPLACEMENT CLAUSE 30. In the event of loss of or damage to any part or parts of an insured machine caused by a peril covered by the Policy the sum recoverable shall not exceed the cost of replacement or repair of such part or parts plus charges for forwarding and refitting, if incurred, but excluding duty unless the full duty is included in the amount insured, in which case loss, if any, sustained by payment of additional duty shall also be recoverable. Provided always that in no case shall the liability of this Company exceed the insured value of the complete machine.

INCHMAREE, AUSTRALIAN, CANADIAN AND UNITED STATES ACTS CLAUSE 31. This insurance shall also cover, subject to the franchise, any loss of and/or damage to the interests insured hereunder directly caused by the bursting of boilers, breakage of shafts or through any latent defect in the machinery, hull or appurtenances of the vessel or arising or resulting from act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship for which the carrier or ship is relieved of responsibility under: (a) Article 4 of the Commonwealth of Australia Sea Carriage of Goods Act 1924, or (b) Article IV Section 2 of the Rules appended to the Water Carriage of Goods Act, 1936, of Canada, or (c) Section 3 of the Act of Congress of the United States, approved 13th February, 1893, or (d) Section 4, Sub-section 2 of the Carriage of Goods by Sea Act 1936, of the United States of America, but nothing in this Clause contained shall limit or affect any rights which Underwriters may have by subrogation or otherwise, against the owners of the said vessel, and provided further that nothing in this clause shall be construed as covering loss or damage arising out of delay, deterioration, or loss of market, unless otherwise provided herein.

BAILEE CLAUSE 32. This insurance warranted to be in all cases null and void to the extent of any insurance by any carrier or bailee which would attach and cover said property if this policy had not been issued, and to be null and void as concerns loss or damage by fire on land to the extent of any insurance against loss or damage by fire, directly or indirectly covering upon the same property, whether prior or subsequent hereto in date, and it is also understood and agreed, that in case any agreement be made or accepted by the Assured with any carrier or bailee by which it is stipulated that such or any carrier or bailee shall have, in case of any loss for which he may be liable, the benefit of this insurance, or exemption in any manner from responsibility grounded on the fact of this insurance, then and in that event this Company shall be discharged of any liability for such loss hereunder, but this policy in these and all cases of loss or damage by perils insured against shall be liable and owe actual payment for (only) what cannot be collected from carrier and/or bailees and/or insurers of property lost or damaged, but also shall be chargeable with the direct pecuniary consequence to the Assured temporarily arising from delay in collection from said carrier and/or bailees and/or insurers, and the advancing for this purpose only of funds to the Assured for his protection pending such delay shall in no case be considered as affecting the question of the final liability of this insurance, and as soon as collection is made from the carrier and/or bailees and/or insurers, the title of the Assured to hold the sums so advanced by this Company shall discontinue, and a portion thereof, equal to the sum collected from the carrier and/or bailees and/or insurers, shall be repaid to this Company, but in case of final failure to collect from the carrier and/or bailees and/or insurers, a portion of the sums advanced by this Company equal to the sum short collected from the carrier and/or bailees and/or insurers may be retained and applied in settlement of the actual liability of this insurance thereby established (provided always the loss shall constitute in other respects a claim under this insurance). In the event of loss or damage this policy shall be null and void to the extent of any payment made by any carrier or bailees or insurers whether liable or not.

WARRANTIES 33. It is understood and agreed that all warranties herein shall operate during the whole period covered by the policy.

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AVERAGE CLAUSES ON DECK SHIPMENTS

34. (a) Shipments while ON DECK of vessel and subject to an On-Deck Bill of Lading are insured: Warranted free from Particular Average unless directly resulting from the vessel or craft being stranded, sunk or burnt, but including the risks of jettison and washing overboard irrespective of percentage.

UNDER DECK SHIPMENTS

(b) Shipments EXCEPTING while ON DECK of vessel are insured:

(1) STEEL; COLD ROLLED, GALVANIZED AND HOT ROLLED PICKLED AND OILED.

AGAINST ALL RISKS OF PHYSICAL LOSS OR DAMAGE FROM ANY EXTERNAL CAUSE INCLUDING RUST, HOWSOEVER CAUSED, EXCLUDING RISKS EXCLUDED BY THE F.C. & S. (FREE OF CAPTURE AND SEIZURE) WARRANTY AND THE S.R. & C.C. (STRIKES, RIOTS AND CIVIL COMMOTIONS) WARRANTY EXCEPT TO THE EXTENT THAT THESE RISKS MAY BE OTHERWISE SPECIFICALLY INSURED ALSO EXCLUDING LOSS OR DAMAGE ARISING FROM DELAY, DETERIORATION, INHERENT VICE OR LOSS OF MARKET.

(2) STEEL; PLAIN HOT ROLLED, BARS, ANGLES, AND OTHER MISCELLANEOUS MERCHANDISE.

AGAINST ALL RISKS OF PHYSICAL LOSS OR DAMAGE FROM ANY EXTERNAL CAUSE EXCLUDING RUST, OXIDATION AND DISCOLORATION UNLESS CAUSED BY CONTACT WITH SEA WATER OR AN F.P.A. PERIL, EXCLUDING RISKS EXCLUDED BY THE F.C. & S. (FREE OF CAPTURE AND SEIZURE) WARRANTY AND THE S.R. & C.C. (STRIKES, RIOTS AND CIVIL COMMOTIONS) WARRANTY EXCEPT TO THE EXTENT THAT THESE RISKS MAY BE OTHERWISE SPECIFICALLY INSURED ALSO EXCLUDING LOSS OR DAMAGE ARISING FROM DELAY, DETERIORATION, INHERENT VICE OR LOSS OF MARKET.

ON DECK AND UNDER DECK SHIPMENTS

(c) Notwithstanding the Average warranties as per clauses 34 (a) and 34 (b) above the Company are to pay the insured value of any package or packages which may be totally lost in loading, transhipment or discharge, also for any loss of or damage to the interest insured which may reasonably be attributed to fire, collision or contact of the vessel and/or craft and/or conveyance with any external substance (ice included) other than water, or to discharge of cargo at port of distress, also to pay landing, warehousing, forwarding and special charges if incurred for which the Company would be liable under a policy covering Particular Average.

DECAY, ETC. 35. Warranted by the assured free from damage or injury from dampness, change of flavor, or decay, or from being spotted, discolored, musty or mouldy, unless caused by actual contact of sea water with the articles damaged, occasioned by sea perils.

SUIT OR ACTION 36. It is agreed that no suit or action for the recovery of any claim arising under this policy shall be maintainable in any Court, unless such suit or action shall have been commenced within two years from the date of the happening of the loss out of which the said claim arose; provided, however, that if, by the laws of the State within which this policy is issued, such limitation is invalid, then any such claim shall be void unless action is commenced within the shortest limit of time permitted by the laws of such State to be fixed herein.

REPORT OF LOSS 37. Warranted by the assured that any loss or damage shall be reported to this Company as soon as known.

SPECIAL POLICY OR CERTIFICATE CLAUSE 38. In order that the Assured may be able to furnish without delay evidence of the fact that insurance has been effected upon shipments covered by this Open Policy, this Company will deliver to the Assured in the state where this Policy is issued and countersigned special policies and/or certificates issued subject to and in accordance with the terms and conditions of this Policy and such other terms and conditions as may be agreed upon between the Assured and this Company; and provided copies of such special policies and/or certificates of insurance are mailed to this Company as soon as practicable, the Assured by endorsement thereon may assign and transfer such special policies and/or certificates of insurance covering any shipment insured hereunder, which assignment or transfer shall convey all the rights of the Assured provided in and by this Open Policy to collect from this Company for any loss, damage or claim with respect to shipments therein described. The assignment and transfer of such special policies and/or certificates are actually done by the Assured for his own benefit and shall not constitute the Assured an agent of this Company for the effecting or procuring of insurance or otherwise.

REPORTING CLAUSE 39. It is warranted by the Assured to declare to the Company all shipments coming within the terms and conditions of this Policy, on the date of receiving advice thereof or as soon thereafter as may be practicable, and to pay the premiums thereon; wilful failure to so declare or to pay premiums when due shall (at the option of the Company) render this Policy null and void as and from the date of such failure.

PAYMENT OF PREMIUMS 40. The Company is entitled to premiums, at agreed rates, on all shipments reported or not. All premiums are to be paid monthly.

LIMIT OF LIABILITY AND ACCUMULATION CLAUSE 41. The Company shall not attach or be liable under this Policy for more than

$2,000,000.00 UNDER DECK

by any one vessel or in any one place at any one time, unless otherwise agreed upon prior to loading on board the vessel, but should there be an accumulation of interests beyond the limits expressed in this Policy by reason of any interruption of transit and/or occurrence beyond the control of the Assured, or by reason of any casualty and/or at a transhipping point and/or on a connecting vessel or conveyance, this Company shall hold covered such excess interest and shall be liable for the full amount at risk (but in no event for more than twice the policy limit), provided notice be given to this Company as soon as known to the Assured.

CANCELLATION CLAUSE 42. This Policy may be cancelled at any time by either party having given the other THIRTY (30) day's notice in writing, but such cancellation shall not prejudice any risk or risks which shall have attached at the time said cancellation becomes effective.

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~~**IMPORT DUTIES** 43. This Insurance also covers subject to policy terms of average, the risk of partial loss by reason of perils insured against on the duties imposed on goods imported into the United States and insured hereunder, it being understood and agreed, however, that when the risk upon the goods continues beyond the time of landing from the overseas vessel, the increased value, consequent upon the payment of such duties, shall attach as an additional insurance upon the goods from the time such duty is paid or becomes due to the extent of the amounts thereof actually paid or payable.~~

~~The Assured warrants that on all risks insured hereunder, a separate amount shall be reported sufficient to cover the said duty, upon which the rate of premium shall be an agreed percentage of the merchandise rate.~~

~~The Assured will, in all cases, use reasonable efforts to obtain abatement or refund of duties paid or claimed in respect of goods lost, damaged or destroyed. It is further agreed that the Assured shall, when the Assurer so elects, surrender the merchandise to the customs authorities and recover duties thereon as provided by law, in which event the claim under this policy shall be only for a total loss of the merchandise so surrendered and expenses.~~

~~This insurance on duty and/or increased value shall terminate at the end of the import movement covered under this policy (including the Warehouse to Warehouse and/or Marine Extension Clauses if incorporated therein), but nothing contained in these clauses shall alter or affect any coverage granted elsewhere in the policy during the storage or transit subsequent thereto.~~

TRADE LOSS 44. In the event of claim under this insurance for loss of and/or damage to merchandise and/or goods upon which there is a normal or usual loss, it is hereby mutually agreed that the claim shall be adjusted and the insured value of the part or parts lost or damaged shall be arrived at in the adjustment of the claim on the basis of expected outturn, whether or not the deduction of normal loss be provided in this insurance or be a trade custom.

INSPECTION OF RECORDS 45. This Company, or its agents, shall have the privilege, at any time during business hours to inspect the records of the Assured as repects shipments coming within the terms of this Policy.

ERRORS AND OMISSIONS 46. This Policy shall not be prejudiced by any unintentional delay or omission in the reporting hereunder or any unintentional error in the amount or description of the interest, vessel or voyage, or if the subject matter of the insurance be shipped by any other vessel, if notice be given the Company as soon as practicable after said facts become known to the Assured and deficiency of premium, if any, made good.

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NOTE:—IT IS NECESSARY FOR THE ASSURED TO GIVE PROMPT NOTICE TO UNDERWRITERS WHEN HE BECOMES AWARE OF AN EVENT FOR WHICH HE IS "HELD COVERED" UNDER THIS POLICY AND THE RIGHT TO SUCH COVER IS DEPENDENT ON COMPLIANCE WITH THIS OBLIGATION.

Provision required by law to be stated in this policy. This policy is in a stock corporation.

IN WITNESS WHEREOF, this Company has caused this policy to be signed by its President and attested by its Secretary, at its office in Hartford, Connecticut; but this policy shall not be valid unless countersigned by a duly authorized Agent of the Company.

Secretary

H. J. Tooker
President

Countersigned at LOS ANGELES, this 26th day of JULY, 1967

W. B. BRANDT & CO., INC.

ACCEPTED: NIMPEX INTERNATIONAL INC.

BY:

DATED: November 6, 1967

PRINTED IN U.S.A.

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LA-308

No. 73 35

A STOCK COMPANY

The Travelers Indemnity Company

PLAINTIFF'S EXH. 3

CERTIFICATE OF INSURANC

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BRANDT MARINE DEPARTMENT

77 BATTERY STREET, SAN FRANCISCO, CALIFORNIA 94119

THE TRAVELERS INDEMNITY COMPANY, in consideration of the payment of a premium as agreed, and subject to the conditions and warranties specified below, on the back hereof and/or attached hereto, does by this Policy make insurance and cause

to be insured, for account of whom it may concern.

in the sum of $440,330.00 Four hundred forty thousand three hundred thirty Dollars and 00/100

upon 2,713.509 Metric Tons Cold Rolled Coils

Marks & Nos. Gross weight
Sizw in mm.
Thickness & width
Coil No.
Heat No.
Color marks

26.MAI 1970
LOUVROIL Nord

valued at sum or sums insured.

laden (under deck) on board the M/V Polarland

B/L or Sig. date 5/12/70

(lost or not lost) at and from interior USA Farrel,Pa. via Cleveland,Ohio to Antwerp, Belgium

Loss, if any, payable to Assured, or order, upon the surrender of this policy at the above office of the Company, or at the office of its nearest settling agent as per back hereof, and, on the payment being made, liability under this insurance shall thereby be discharged.

SPECIAL CLAUSES (See also printed conditions on back hereof)

This insurance is subject to the following current American Institute Clauses:

Amended F. C. & S. Warranty
Marine Extension Clauses
South America Clause
S. R. & C. C. Endorsement
War Risk Insurance

All risks of physical loss or damage from any external cause including war

Not withstanding anything to the contrary contained in the warehouse to warehouse clause, this insurance attaches ex mill at Farrel, Pa. and shall continue until tackle takes hold of each coil for commencement of unloading at port of discharge at which time this insurance shall cease.

The following warranties shall be paramount and shall not be modified or superseded by any other provision included in this Policy or stamped or endorsed hereon unless such other provision refers specifically to the risks excluded by these warranties and expressly assumes the said risks:

F. C. & S. WARRANTY (a) Notwithstanding anything contained to the contrary, this insurance is warranted free from capture, seizure, arrest, restraint, detainment, confiscation, preemption, requisition or nationalization, and the consequences thereof or any attempt thereat, whether in time of peace or war and whether lawful or otherwise; also warranted free, whether in time of peace or war, from all loss, damage or expense caused by any weapon of war employing atomic or nuclear fission and/or fusion or other reaction or radioactive force or matter or by any mine or torpedo, also warranted free from all consequences of hostilities or warlike operations (whether there be a declaration of war or not), but this warranty shall not exclude collision or contact with aircraft, rockets or similar missiles or with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather, fire or explosion unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purposes of this warranty 'power' includes any authority maintaining naval, military or air forces in association with a power.

Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

S. R. & C. C. WARRANTY (b) Warranted free of loss or damage caused by or resulting from strikes, lockouts, labor disturbances, riots, civil commotions or the acts of any person or persons taking part in any such occurrence or disorder.

IN WITNESS WHEREOF, this Company has caused this policy to be signed by its President and attested by its Secretary, at its office in Hartford, Connecticut; but this policy shall not be valid unless countersigned by a duly authorized Agent of the Company or the Assured.

Secretary

J.J. Hooker
President

Dated at New York, N.Y. May 11, 19 70 By: Henry Bruckey

This Policy is issued in original and duplicate, one of which being accomplished, the other to stand null and void.

PRINTED IN U.S.A.

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CONDITIONS AND WARRANTIES (Continued)

Touching the adventures and perils which the said COMPANY is contented to bear, and takes upon itself in this voyage they are of the seas, fires, assailing thieves, jettisons, barratry of the master and mariners, and all other like perils, losses and misfortunes that have or shall come to the hurt, detriment or damage of the said goods and merchandise or any part thereof.

In case of any loss or misfortune it shall be lawful and necessary for the Assured, their factors, servants and assigns, to sue, labor and travel for, in and about the defense, safeguard, and recovery of the aforesaid subject matter of this insurance, or any part thereof, without prejudice to this insurance, the charges whereof [illegible] in proportion to the sum hereby insured.

It is expressly declared and agreed that no acts of this Company or Assured in recovering, saving, or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

This insurance attaches from the time the goods leave the Warehouse and/or store at the place named in the Policy for the commencement of the transit and continues during the ordinary course of transit, including customary transhipment if any, until the goods are discharged overside from the overseas vessel at the final port. Thereafter the insurance continues whilst the goods are in transit and/or awaiting transit until delivered to final warehouse at the destination named in the Policy or until the expiry of 15 days (or 30 days if the destination to which the goods are insured is outside the limits of the port) whichever shall first occur. The time limits referred to above to be reckoned from midnight of the day on which the discharge overside of the goods hereby insured from the overseas vessel is completed. Held covered at a premium to be arranged in the event of transhipment, if any, other than as above and/or in the event of delay in excess of the above time limits arising from circumstances beyond the control of the Assured.

Under deck shipments are insured: Warranted free from Particular Average unless the vessel or craft be stranded, sunk, or burnt, but notwithstanding this warranty these Assurers are to pay any loss of or damage to the interest insured which may reasonably be attributed to fire, collision or contact of the vessel and/or craft and/or conveyance with any external substance (ice included) other than water, or to discharge of cargo at port of distress.

On deck shipments are insured—"Free of Particular Average unless caused by the vessel and/or interest insured being stranded, sunk, burnt, on fire or in collision with another ship or vessel or with ice or with any substance other than water, but liable for jettison and/or washing overboard, irrespective of percentage."

Including transit by craft and/or lighter to and from the vessel. Each craft and/or lighter to be deemed a separate insurance. The Assured are not to be prejudiced by any agreement exempting lightermen from liability.

This insurance shall not be vitiated by any unintentional error in description of vessel, voyage or interest, or by deviation, over carriage, change of voyage, transhipment or any other interruption of the ordinary course of transit, from causes beyond the control of the Assured. It is agreed, however, that any such error, deviation or other occurrence mentioned above shall be reported to this Company as soon as known to the Assured, and additional premium paid if required.

General Average and Salvage Charges payable according to United States laws and usage and/or as per Foreign Statement and/or as per York-Antwerp Rules (as prescribed in whole or in part) if in accordance with the contract of Affreightment.

This Company shall be liable for only such proportion of General Average and Salvage Charges as the sum hereby insured (less Particular Average for which this Company is liable hereunder, if any) bears to the Contributory Value of the property hereby insured.

No recovery for a constructive total loss shall be made hereunder unless the property hereby insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it cannot be preserved from actual total loss without an expenditure which would exceed its value when the expense had been incurred.

The Assured are not to be prejudiced by the presence of the negligence clause and/or latent defect clause in the Bills of Lading and/or Charter Party. The seaworthiness of the vessel as between the Assured and the Company is hereby admitted and the wrongful act or misconduct of the shipowner or his servants causing a loss is not to defeat the recovery by an innocent Assured if the loss in the absence of such wrongful act or misconduct would have been a loss recoverable on the Policy. With leave to sail with or without pilots, and to tow and assist vessels or craft in all situations, and to be towed.

Where this insurance by its terms covers while on docks, wharves or elsewhere on shore and/or during land transportation, it shall include the risks of collision, derailment, or any other accident to the conveyance, fire, lightning, sprinkler leakage, cyclones, hurricanes, earthquakes, floods (meaning the rising of navigable waters) and/or collapse or subsidence of docks or wharves.

In case of damage affecting labels, capsules or wrappers, this Company, if liable therefor under the terms of this Policy, shall not be liable for more than an amount sufficient to pay the cost of new labels, capsules or wrappers, and the cost of reconditioning the goods, but in no event shall this Company be liable for more than the insured value of the damaged merchandise.

In the event of loss of or damage to any part or parts of an insured machine caused by a peril covered by the Policy the sum recoverable shall not exceed the cost of replacement or repair of such part or parts plus charges for forwarding and refitting, if incurred, but excluding duty unless the full duty is included in the amount insured, in which case loss, if any, sustained by payment of additional duty shall also be recoverable. Provided always that in no case shall the liability of the Company exceed the insured value of the complete machine.

Including the risk of explosion, howsoever or wheresoever occurring during the currency of this insurance, unless excluded by the F.C.&S. Warranty or the S.R.&C.C. Warranty set forth herein.

Where the goods are shipped under a Bill of Lading containing the so-called "Both to Blame Collision" Clause, this Company agrees as to all losses covered by this insurance to indemnify the Assured for this Policy's proportion of any amount (not exceeding the amount insured) which the Assured may be legally bound to pay to the shipowners under such clause. In the event that such liability is asserted the Assured agree to notify this Company, who shall have the right at its own cost and expense to defend the Assured against such claim.

Warranted by the Assured free from any liability for merchandise in the possession of any carrier or other bailee who may be liable for any loss or damage thereto, and from any liability for merchandise shipped under a bill of lading containing a stipulation that the carrier or bailee may have the benefit of any insurance thereon. However, this Company agrees to pay to the Assured the difference between the amount which would be a claim under this Policy if it did not contain this warranty and the amount actually recovered by the Assured from such carrier or bailee, plus the costs and expenses of prosecuting the claim against such carrier or bailee. Pending collection from such carrier or bailee this Company agrees to advance such amount which would be a claim under this Policy if it did not contain this warranty, as a loan repayable only out of the proceeds of collection from such carrier or bailee.

Warranted free of loss or damage caused by or resulting from strikes, lockouts, labor disturbances, riots, civil commotions or the acts of any person or persons taking part in any such occurrence or disorder.

Warranted free of claim for loss of market or for loss, damage or deterioration arising from delay, whether caused by a peril insured against or otherwise, unless expressly assumed in writing herein.

It is also agreed that the property be warranted by the Assured free from any charge, damage or loss, which may arise in consequence of a seizure or detention for or on account of any illicit or prohibited trade or any trade in articles contraband of war.

The goods insured hereunder are understoood to be laden Under Deck unless otherwise expressly stated in this Policy.

PROVIDED ALWAYS, and it is hereby further agreed that if the said Insured shall have made any other insurance upon the property aforesaid, prior in day of date to this Policy, then this Company shall be answerable only for so much as the amount of such prior insurance may be deficient towards fully covering the property hereby insured. And this Company shall return the premium upon so much of the sum by them insured as they shall be by such prior insurance exonerated from. And in case of any insurance upon the said property subsequent in day of date to this Policy, this Company shall nevertheless be answerable for the full extent of the sum by them subscribed hereto without right to claim contribution from such subsequent insurers. And shall accordingly be entitled to retain the premium by them received in the same manner as if no such subsequent insurance had been made. Other insurance upon the property aforesaid, of date the same day as this Policy, shall be deemed simultaneous herewith, and this Company shall not be liable for more than a ratable contribution in the proportion of the sum by them insured to the aggregate of such simultaneous insurance.

It is necessary for the Assured to give prompt notice to Underwriters when they become aware of an event for which they are "held covered" under this policy and the right to such cover is dependent on compliance with this obligation.

THIS SPACE IS RESERVED FOR ENDORSEMENTS IN TRANSFER OF THIS DOCUMENT

SPECIAL NOTICE TO CLAIMANTS

IN CASE OF DAMAGE to the goods hereby insured, application for survey, appraisal and authentication of proofs of loss should be made to the settling agent of the Company at the port of destination if there be one at such port, otherwise to the correspondent of the AMERICAN INSTITUTE OF MARINE UNDERWRITERS, or if there be none, to Lloyd's agent.

Any apparent loss or damage or irregularity in this shipment SHOULD BE NOTED ON RECEIPT given to the carriers and preliminary CLAIM should be FILED with them IN WRITING IMMEDIATELY. When survey is held to ascertain loss or damage the carrier should be given an opportunity of being represented and claim for actual loss MUST BE FILED AGAINST THE CARRIER IN WRITING.

Copies of notation on receipts and correspondence in connection with claim against carrier must form part of proof of loss under the Insurance Policy.

A full list of settling agents of this Company appears below.

After a proper adjustment settlement of the loss may be made at the office of the nearest settling agent in the manner herein indicated.

The Revenue Laws of Great Britain require that this policy be stamped within thirty days after receipt in the United Kingdom, otherwise loss cannot be collected there. Such stamps to be at the expense of the policy holder.

CLAIMS SETTLING AGENCIES

BRANDT MARINE DEPARTMENT

UNITED STATES BRANCHES

HOUSTON LOS ANGELES NEW YORK SEATTLE

FOREIGN REPRESENTATIVES

EUROPE, NORTH AFRICA, NEAR EAST

General Settling Agents W. K. Webster & Co., Lloyds Chambers, 9-13 Crutched Friars, London, E. C. 3

Claim Agents Operating Through W. K. Webster & Co.

Alexandria [illegible] & Co.
[illegible] & Sons Ltd
Amsterdam [illegible]
Antwerp [illegible] Van Peborgh
Athens J. A. [illegible]
Barcelona [illegible] & Co. Ltd
Beirut [illegible] Company
Bordeaux M. Andre Pierron (Bureau Maritime)

Bremen [illegible]
[illegible] Ltd
Copenhagen [illegible] Ltd
Genoa [illegible]
Gothenburg [illegible]
Haifa [illegible] Ltd. (Jaffa Jerusalem)
Hamburg [illegible] & Co. Ltd
Le Havre J. [illegible]

Helsingfors [illegible]
Lisbon [illegible] Ltd
Malmo [illegible]
Marseilles [illegible] Assurances Maritime
Paris Jacques [illegible]
Rotterdam John Hudig & Son
Stockholm [illegible] A. B.
Tripoli Libyan Shipping & Stevedoring Co. (Claim Advisers)

SOUTH AMERICA Settling Agents

Barranquilla ALIA Colombiana S. R. Ltda
Buenos Aires [illegible]
[illegible] Commercial & Industrial
Caracas [illegible] S. A.

Guayaquil [illegible] Commercial
[illegible]
Lima H. W. [illegible] and Company

Montevideo John R. Ayling
Rio De Janeiro Cia. ALIA do Brasil S. A.
(Representacoes e Administracao)
Valparaiso [illegible] and Company Ltd

WEST INDIES AND CENTRAL AMERICA Settling Agents

Balboa [illegible]
Ciudad Trujillo [illegible] C. Por A.
Cristobal [illegible] & Co.

Havana [illegible] S. A.
Hamilton [illegible]
[illegible] S. A.

San Jose [illegible]
San Salvador [illegible]

Pltfs 4 2 for Iden
jps 5/28/74

TTX4

PLAINTIFF'S EXH. 4
BILL OF LADING NO. 3

BILL OF LADING

546a

UNIFORM BILL OF LADING 1946

approved by
The Documentary Council of The Baltic and International Maritime Conference.
To be used with Charter-Parties.
Code Name: Congenbill.

Shipped at Cleveland, Ohio
in apparent good order and condition by Nimpex International Inc.
of New York, N.Y. on board the good Vessel called the M.V. POLARLAND
for carriage to
or so near thereto as she may safely get, the following goods: Antwerp, Belgium

Franklin National Letter of Credit U 52215

Marks & Nos Gross Weight Size in MM (Thickness & Width) Coil Number Heat Number	Cold Rolled Coils premier choix qualite Commercial material Non Recuit Non huile. 123 Coils 0.5 x ~~1002~~ 916 MM 1,071.002 KILOS Freight - Prepaid
/// White	Notify: S.A. Fabrique de Fer De Maubeuge B.P. 100, 59 Maubeuge (France)

also notify: Thoumsin, Antwerp.

Outer wrappers athmospherically rust stained
Outer wrappers slightly damaged
Some bands damaged and/or missing

United States Law Prohibits [illegible]

(of which NONE on deck at Shippers' risk; the Carrier not being responsible for loss or damage howsoever arising) which are to be delivered in the like good order and condition at the aforesaid Port of Antwerp unto Order of Shipper
or his or their Assign(s), he or they paying freight at ~~the rate of~~ XXXXXXXX *
(say XXX per XX) as per Charter-Party, dated March 5, 1970
All the terms, conditions, liberties, and XX exceptions of the Charter-Party are herewith incorporated. Except no Dispatch to Consignee

This Bill of Lading shall have effect subject to the provisions of any legislation relating to the carriage of goods by sea which incorporates the rules relating to Bills of Lading contained in the International Convention, dated Brussels 25th August, 1924 and which is compulsorily applicable to the contract of carriage herein contained. Such legislation shall be deemed to be incorporated herein, but nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities thereunder. If any term of this Bill of Lading be repugnant to any extent to any legislation by this clause incorporated, such term shall be void to that extent but no further. Nothing in this Bill of Lading shall operate to limit or deprive the Carrier of any statutory protection or exemption from, or limitation of, liability.

Freight Advance.
Received on account of freight:

Weight, measure, quality, quantity, condition, contents and value unknown.
IN WITNESS whereof the Master or Agent of the said Vessel has signed
Bills of Lading all of this tenor and date, any one of which being accomplished the others to be void.

the 19

B/L No. 3

World Shipping Inc. As Agent [illegible]
by Authority of the Master

* Between Messers Ferrostal A.G. of Essen
and Seven Seas Shipping Corp. of New York

Dfts '43 for ID
5-11-74

COPY NON-NEGOTIABLE

PX 5

PPP

MS 5/28/78

PLAINTIFF'S EXH. 5
BILL OF LADING NO. 2

547a

BILL OF LADING

UNIFORM BILL OF LADING 1946

approved by
The Documentary Council of The Baltic and International Maritime Conference.
To be used with Charter-Parties.
Code Name: Congenbill.

Shipped at Cleveland, Ohio
in apparent good order and condition by Nimpex International Inc.
of New York, N.Y. on board the good Vessel called the M.V. Polarland
for carriage to Antwerp, Belgium
or so near thereto as she may safely get, the following goods:

Franklin National Letter of Credit U 52215

Marks & Nos Gross Weight Size in MM (Thickness & Width) Coil Number Heat Number	Cold Rolled Coils premier choix qualite Commercial material Non Recuit Non huile 59 Coils 0.8 x 1002 MM 536.805 KILOS Freight - Prepaid
// White	Notify: S.A. Fabrique de Fer de Maubeuche B.P. 100, 59 Maubeuge (France)
	also notify: Thoumsin, Antwerp
	Outer wrappers athmosperically rust stained Outer wrappers slightly damaged Some bands damaged and/or missing

*United States Law Prohibits [illegible] Of These Commodities To The Soviet Bloc, Communist China, North Korea, Hong Kong, [illegible] Controlled Areas of Viet Nam And Laos, Cuba, Or Southern Rhodesia, Unless Otherwise Authorized by the United States

(of which NONE on deck at Shippers' risk; the Carrier not being responsible for loss or damage howsoever arising) which are to be delivered in the like good order and condition at the aforesaid Port of Antwerp unto
Order of Shipper
or his or their Assign(s), he or they paying freight ~~at the rate of~~
~~(say~~ per ~~)~~ as per Charter-Party, dated March 5, 1970

All the terms, conditions, liberties, and exceptions of the Charter-Party are herewith incorporated. Except No Dispatch to Consignee

This Bill of Lading shall have effect subject to the provisions of any legislation relating to the carriage of goods by sea which incorporates the rules relating to Bills of Lading contained in the International Convention, dated Brussels 25th August, 1924 and which is compulsorily applicable to the contract of carriage herein contained. Such legislation shall be deemed to be incorporated herein, but nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities thereunder. If any term of this Bill of Lading be repugnant to any extent to any legislation by this clause incorporated, such term shall be void to that extent but no further. Nothing in this Bill of Lading shall operate to limit or deprive the Carrier of any statutory protection or exemption from, or limitation of, liability.

Freight Advance.
Received on account
of freight:

Weight, measure, quality, quantity, condition, contents and value unknown.

IN WITNESS whereof the Master or Agent of the said Vessel has signed Bills of Lading all of this tenor and date, any one of which being accomplished the others to be void.

New York, N.Y. the 12th May 1970
World Shipping Inc. as Agent only
by Authority of the Master

B/L No. 2

* Between Messers Ferrostaal A.G. of Essen
and Seven Seas Shipping Corp. of New York

COPY NON-NEGOTIABLE

DHS 42619
5-6-78

PLAINTIFF'S EXH. 6
BILL OF LADING NO. 1

TX6

548a

BILL OF LADING

UNIFORM BILL OF LADING 1946

approved by
The Documentary Council of the Baltic and International Maritime Conference.
To be used with Charter-Parties.
Code Name: Congenbill.

Shipped at Cleveland, Ohio
in apparent good order and condition by Nimpex International Inc.
of New York, N.Y. on board the good Vessel called the M.V. Polarland
for carriage to Antwerp Belgium
or so near thereto as she may safely get, the following goods:

Franklin National Letter of Credit U52215

Marks & Nos Gross Weight Size in MM (Thickness & Width) Coil Number Heat Number	Cold Rolled Coils premier choix qualite Commercial material Non Recuit Non huile. 117 Coils 1 x 1002 MM 1,105.702 KILOS Freight Prepaid
/ White	Notify: S.A. Fabrique de Fer de Maubeuche B.P. 100, 59 Maubeuge (France) Also Notify: Thoumsin, Antwerp.

Outer wrappers athmosperically rust stained
Outer wrappers slightly damaged
Some bands damaged and/or missing

"United States Law Prohibits Disposition Of These Commodities To The Soviet Bloc, Communist China, North Korea, Macao, Hong Kong, Communist Controlled Areas of Viet Nam And Laos, Cuba, Or Southern Rhodesia, Unless Otherwise Authorized by The United States"

(of which NONE on deck at Shippers' risk; the Carrier not being responsible for loss or damage howsoever arising) which are to be delivered in the like good order and condition at the aforesaid Port of Antwerp unto
Order of Shipper
or his or their Assign(s), he or they paying freight ~~at the rate of~~
~~(say~~ ~~per~~ ~~xx~~) as per Charter-Party, dated March 5, 1970*

All the terms, conditions, liberties, and exceptions of the Charter-Party are herewith incorporated. Except No Dispatch to Consignee

This Bill of Lading shall have effect subject to the provisions of any legislation relating to the carriage of goods by sea which incorporates the rules relating to Bills of Lading contained in the international Convention, dated Brussels 25th August, 1924 and which is compulsorily applicable to the contract of carriage herein contained. Such legislation shall be deemed to be incorporated herein, but nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities thereunder. If any term of this Bill of Lading be repugnant to any extent to any legislation by this clause incorporated, such term shall be void to that extent but no further. Nothing in this Bill of Lading shall operate to limit or deprive the Carrier of any statutory protection or exemption from, or limitation of, liability.

Weight, measure, quality, quantity, condition, contents and value unknown.

ght Advance.
eceived on account
freight:

IN WITNESS whereof the Master or Agent of the said Vessel has signed
Bills of Lading all of this tenor and date, any one of which being accomplished the others to be void.

New York, N.Y. the 12th May 1970
World Shipping Inc. As Agent only
by Authority of the Master

B/L No. 1

Between Messors Ferrostal A.G. of Essen
and Seven Seas Shipping Corp of New York

Dft's X 1 FID
576-7
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Seven Seas Shipping Corp.

745 FIFTH AVENUE
NEW YORK, NEW YORK 10022

WESTERN UNION TELEX 01-26126
R.C.A. TELEX 224-594
ANSWERBACK "FRIEDMN"

TELEPHONE - (212) 752-7535
CABLE ADDRESS "SETSEACOR"

PLAINTIFF'S EXH. 9
LETTER SEVEN SEAS/NIMPEX
JUNE 8, 1971

June 8, 1971

Nimpex International Inc.
745 Fifth Avenue
New York, N.Y. 10022

Re: "POLARLAND", Voy. 13E

Gentlemen:

We hereby extend your time to file suit on behalf of owners and/or underwriters for 90 days up to and including September 6, 1971.

Very truly yours,

SEVEN SEAS SHIPPING CORP.

John P Mazzell

JM/ia

John P. Mazzella

550a

11

PLAINTIFF'S EXH. 11
SURVEYOR'S REPORT
AND CONFIRMATION

FIRM MOUZON & Cº S.A.

MANAGING DIRECTOR
F. MOUZON, MASTER MARINER
PHONES MANAGEMENT: 32.73.53 - 32.45.28
QUAY Nº 190: 41.16.14

C.C.P. Nº 55.39.04
BANQUE DE COMMERCE C. Nº 545.?7
COMM. REG. OF ANTWERP Nº 109.003
TELEGRAPH. ADDRESS: PROCARGO
ANTWERP

MARINE AND GOODS SURVEYORS

[illegible] ANTWERPEN 1, [illegible] June 1970
25, ST. PAULUSSTRAAT

[illegible]

[illegible]
[illegible]
[illegible]

Dear Sir,

M/S "[illegible]" arrived in Antwerp on the 6th June [illegible]
at berth [illegible] of the [illegible]
[illegible] Cleveland/Antwerp - [illegible] coils cold rolled
steel sheets - [illegible]

For good order's sake we confirm the results of the survey held with you on the [illegible], [illegible], [illegible], [illegible] [illegible] June 1970, in the presence of a representative of Messrs. [illegible], forwarding agents in Antwerp.

Description of the damages

[illegible] coils with [illegible] and/or contents wet due to condensation
All coils packing partly rust stained
All coils packing partly buckled at various places and dented
All coils [illegible] up to 1 inch at inner edges
and/or [illegible]

Besides, we found the following :

B/L 1 - 117 coils cold rolled steel sheets - [illegible]
1 x 1.02 mm

[illegible]

[illegible] - [illegible]
slightly ovalised
circumference envelope buckled
[illegible] holed over 5" at inner [illegible]
on one side, packing torn [illegible]
exposed contents [illegible] on [illegible]
on [illegible] side, packing torn [illegible] holed over 5" [illegible] at [illegible]
[illegible], exposed contents partly rust stained [illegible]
edge

[illegible] - [illegible]
slightly ovalised
[illegible] holes at several places over 5" in [illegible]
packing torn [illegible] partly rust stained
[illegible], exposed contents partly [illegible]
[illegible]
exposed contents partly rust [illegible]
packing torn [illegible]
partly rust [illegible] .....

BEST COPY AVAILABLE

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[illegible]

m/s "[illegible]"

[illegible]

[illegible] – [illegible] lbs
on one side, packing torn & holed over 1" at inner edge,
exposed contents dented on edge
on other side, packing torn & holed at outer edge, exposed
contents partly rust stained and dented on edge

[illegible] – [illegible] lbs
slightly ovalised
packing loose all over in the core
on one side, packing torn & holed over [illegible] ft on edge, exposed
contents partly rust stained & chafed at several places
on other side, packing torn & holed over [illegible] ft at inner edge,
[illegible] chafed on edge

[illegible]

[illegible] – [illegible] lbs
packing torn & holed over 3" at inner edge, exposed contents
partly rust stained & dented on edge

[illegible] – [illegible] lbs
circumference envelope buckled all over, torn & holed at
[illegible] places over [illegible], exposed layer scratched
packing torn & holed over 5" at outer edge, exposed contents
partly rust stained, waved & chafed on edge

[illegible]

[illegible]-7 – [illegible] lbs
slightly ovalised
packing torn & holed over 2" at 2 places at inner edge,
exposed contents chafed on edges

[illegible] – [illegible] lbs
circumference envelope partly loose & buckled
on one side, packing torn & holed 1" at inner edge, exposed
contents partly rust stained & dented on edge
packing torn & holed 1" at center, exposed con-
tents partly rust stained & dented on edge
packing torn & holed 1" at outer edge, exposed
contents partly rust stained & dented on edge
on other side, packing loose & holed over 1 ft at inner edge,
exposed contents partly rust stained & chafed on edge

[illegible]

[illegible] – [illegible] lbs
slightly ovalised
packing chafed in the core
on one side, packing torn & open at inner edge, exposed con-
tents partly rust stained, 3 windings waved on edge
on other side, packing torn & open at inner edge, exposed
windings slightly waved on edge

[illegible] – 17.[illegible] lbs
on one side, packing torn & holed 4" at inner edge, inner
layer chafed on edge
on other side, packing torn & holed 1" at inner edge, exposed
contents partly rust stained & dented on edge

.../.

[illegible] m/s "[illegible]"

[illegible]

[illegible] – [illegible]
on both edges, packing torn & holed over 4", exposed windings waved on edge
on one side, packing torn & holed over 4", exposed windings waved on edge

[illegible]-12 – [illegible] lbs
on one side, packing torn & holed over 1" at inner edge, exposed contents partly rust stained & chafed on edge
[illegible] packing torn & holed over [illegible]" at center, exposed contents partly rust stained & chafed on edge
packing torn & holed over 1" at outer edge, exposed contents partly rust stained & chafed on edge
on other side, packing torn & holed over 7" at 2 places at inner edge, exposed contents partly rust stained & chafed 1" on edge, inner winding [illegible] on edge

[illegible] n° [illegible]

[illegible] – [illegible]
slightly ovalized
packing buckled in the core
on one side, packing torn & holed at inner edge, exposed contents partly rust stained
on other side, packing torn over 1ft at outer edge

[illegible]4-33 – [illegible] lbs
packing torn & holed over ½ ft at inner edge, exposed contents partly rust stained & slightly waved on edge

[illegible] on n° [illegible]

[illegible] – [illegible] lbs
circumference envelope partly loose and buckled

[illegible]15.16 – [illegible] lbs
circumference envelope buckled over [illegible] ft
on one side, packing torn & holed over 1" at inner edge, inner layer chafed on edge
packing torn & holed over 5" x [illegible]" at center, exposed contents partly rust stained & chafed on edge
on other side, packing torn & chafed over 1" at 2 places at inner edge, inner layer chafed on edge

[illegible] on n° [illegible]

[illegible] – [illegible] lbs
on one side, packing torn & holed 8" at inner edge, exposed contents partly rust stained, waved & chafed on edge
on other side, packing torn & holed at [illegible] places over [illegible]" at inner edge, exposed contents partly rust stained & chafed on edge

[illegible]15.14 – [illegible] lbs
packing torn & holed 1" at inner edge, exposed contents chafed on edge
packing torn & holed [illegible]" x [illegible]" at center & at outer edge, exposed contents partly rust stained & chafed on edge

…/.

Firme MOUZON & Co S.A.
N° 3653
GH/VE

Suite No. 3 553a

m/s "POLARLAND"

Wagon n°61.88.3000.257.0

3915-7 - 12.170 lbs
packing torn & holed 1" at center, exposed contents chafed on edge

3914-27 - 16.3[illegible]0 lbs
ovalized 540 x 600 mm & flattened over [illegible] ft. at outer edge
circumference envelope scored over 1 ft
on both sides, packing torn & holed over [illegible] ft at inner edge, exposed contents partly rust stained & slightly waved on edge

Wagon n°61.[illegible].3315.[illegible].6

3913-5 - 21.[illegible] lbs
packing generally buckled on both sides at inner edge
on one side, packing torn & holed over 3"x [illegible]" at center, exposed contents partly rust stained & chafed on edge
packing torn & holed over [illegible]"x 1" at inner edge, exposed contents partly rust stained
on other side, packing torn & holed at inner edge, inner layer waved & chafed on edge

* 3914-10 - 18.030 lbs
circumference envelope out of line over 5" and buckled
on one side, packing torn & holed over 4"x [illegible]" at outer edge, exposed contents partly rust stained, outer layer scratched on edge
packing torn & holed over 4"x 2" at inner edge, exposed contents partly rust stained
on other side, packing torn & holed over 9"x [illegible]" at inner edge, exposed contents partly rust stained
2 inner windings waved & bent on edge

Wagon n°61.[illegible].3302.2[illegible].0

3915-15 - [illegible].130 lbs -
evidence of salt contamination on the packing
packing out of line & buckled in the core

3915-19 - 22.350 lbs
circumference envelope out of line over ½ft & buckled
on one side, packing torn & holed over [illegible]"x [illegible]" & [illegible]"x 1" at inner edge, exposed contents partly rust stained & chafed on edge
on other side, packing torn & holed over 2" at outer edge, exposed windings slightly scratched

Wagon n°61.[illegible].3300.[illegible]-8

3914-42 - [illegible].030 lbs
evidence of salt contamination on the packing
on one side, packing torn & holed 4"x 1" at inner edge, exposed contents partly rust stained
on other side, packing torn & holed [illegible]"x 1", at inner edge, exposed contents partly rust stained & waved on edge

3913-17 - [illegible].410 lbs
packing buckled, torn & holed all over in the core, exposed windings partly rust stained
on one side, packing torn & holed over 1ft at inner edge, exposed contents partly rust stained

.../.

[illegible]

s/s "[illegible]"

on other side, packing torn & buckled all over at inner edge
packing torn & holed [illegible]"x [illegible]" at center, exposed
contents partly rust stained & chafed on edge

[illegible] n° [illegible]

[illegible] - [illegible] lbs
packing slightly buckled at inner edges

[illegible]-30 - [illegible] lbs
packing buckled & torn in the core, contents exposed, inner
paper [illegible]
on one side, packing torn & holed in the center, contents
exposed [illegible], packing torn & holed at [illegible] places over [illegible]"x [illegible]" at
inner edge, exposed contents [illegible] & waved on edge
on other side, packing torn & holed at [illegible] places over [illegible]" at
inner edge, exposed contents chafed & waved on edge

[illegible] n° [illegible]

[illegible] - [illegible] lbs
packing buckled on both sides, paper exposed

n°unknown-1[illegible] - [illegible] lbs
packing torn & holed at outer edge over [illegible]"x [illegible]", exposed
contents partly rust stained
packing torn & holed at inner edge over [illegible]", exposed contents
partly rust stained

[illegible] n° [illegible]-3

3[illegible]-1 - [illegible].570 lbs
packing buckled, torn & holed in the core, contents exposed
on one side, packing torn & holed [illegible]" at inner edge, exposed
contents partly rust stained
on other side, packing torn & holed [illegible]" at inner edge, exposed
contents partly rust stained

3[illegible]-8 - [illegible].760 lbs
circumference envelope buckled over [illegible] ft
on one side, packing buckled, torn & holed over [illegible] ft at inner
edge, exposed contents partly rust stained & bent on edge
on other side, packing torn & holed [illegible]" at inner edge, exposed
contents chafed on edge
packing torn & holed over [illegible] ft at inner edge,
exposed contents partly rust stained & chafed on edge

[illegible] n° [illegible].3

3[illegible] - [illegible] lbs
packing buckled all over in the core
on one side, packing torn & holed 5", 5"x[illegible]" at inner edge,
exposed contents chafed on edge
on other side, packing torn & holed 5" at inner edge, exposed
contents partly rust stained, inner winding waved & bent on [illegible]

3[illegible] - [illegible] lbs
circumference envelope buckled [illegible] ft
on one side, packing torn & holed [illegible]"x [illegible]" at inner edge,
exposed contents waved [illegible] bent on edge
on other side, packing torn & holed [illegible]" at inner edge, exposed
contents partly rust stained & chafed on edge
....

[illegible]

m/s "POLARLANT"

packing torn & holed 2" at inner edge, exposed contents chafed on edge

Wagon n°61.[illegible] [illegible]-2

3914-19 - 16.[illegible] lbs
packing out of line over 1ft & buckled all over in the core, paper wrapping exposed
packing torn & holed over 2" at outer edge, 3 windings waved & bent on edge
packing torn & holed at 2 places over 3" at outer edge, 2 windings dented & nicked on edge
packing torn & holed over 1ft at inner edge, exposed contents partly rust stained, waved & chafed on edge

3915-13 - [illegible]0 lbs
evidence of salt contamination on the packing
packing out of line in the core
circumference envelope buckled over 1ft
packing torn & holed over 1ft x 5" at center, exposed contents partly rust stained & chafed on edge
packing torn & holed over 4" x 4" at inner edge, exposed contents partly rust stained, 3 windings waved on edge

Wagon n°31.[illegible].[illegible]-5

3914-16 - 17.[illegible]70 lbs
packing out of line in the core
on one side, packing buckled at inner edge
on other side, packing torn & holed over 1" at inner edge, exposed contents waved on edge

3914-3 - 17.[illegible] lbs
on one side, packing buckled over ½ circumference
packing torn & holed over ½" at outer edge, outer winding torn on edge
on other side, packing torn & holed over ½" at inner edge, inner winding torn on edge

3914-20 - 18.[illegible]0 lbs
packing torn & holed over ½" at inner edge, 3 inner windings waved & dented on edge

3914-29 - 16.9[illegible]0 lbs
packing buckled & out of line all over
on one side, packing torn & holed at 2 places over 3" at inner edge, 4 inner windings waved & bent on edge
on other side, packing torn & holed over 3" & 1" at inner edge, 3 inner windings waved & bent on edge

3914-22 - 17.510 lbs
packing torn & holed over 10" in the core, inner winding scratched
circumference envelope torn & holed over 9", outer winding scratched
on one side, packing torn & holed over [illegible]" x 1" & 1" at inner edge, exposed contents partly rust stained & chafed on edge
on other side, packing torn & holed over 3" x 2" at inner edge, 4 inner windings waved on edge

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s/s "[illegible]"

3014-7 - 17.[illegible] lbs
evidence of salt contamination on the packing
on one side, packing torn & holed over [illegible] x [illegible]" at inner edge,
exposed contents partly rust stained, [illegible] inner windings waved
& dented on edge
on other side, packing torn & holed over 1" at inner edge,
inner layer dented on edge

[illegible]

[illegible] - [illegible]
circumference envelope torn over [illegible]"
on one side, packing torn & holed at [illegible] places over [illegible]" x [illegible]",
[illegible] at inner edge, exposed contents partly rust
stained, [illegible] waved on edge
on other side, packing torn & holed over [illegible]" x 1" at inner edge,
exposed contents slightly telescoped & dented on edge

[illegible] - [illegible] lbs
on one side, packing torn over 1" x 1" at inner edge, paper
packing exposed
on other side, packing torn & holed at [illegible] places over 1" at
inner edge, contents exposed

3013-27 - [illegible].600 lbs
packing buckled all over in the core
on one side, packing torn & holed over [illegible]" x 4" at inner edge,
exposed contents dented & bent on edge
packing torn & holed over [illegible]" at inner edge,
exposed contents partly rust stained
packing torn & holed over 1" at center, exposed
contents dented on edge
on other side, packing torn & holed over [illegible]" x 4" at outer edge,
exposed contents slightly telescoped, partly rust stained,
waved [illegible] on edge
packing torn & holed over 3ft at inner edge,
exposed contents partly rust stained, [illegible] inner windings waved &
bent on edge
packing torn & holed over 10" x [illegible]" at inner edge,
exposed contents waved & bent on edge

3015-18 - [illegible] lbs
side packing generally buckled
circumference envelope buckled, torn & holed over 4", exposed
contents partly rust stained & scratched
packing torn & holed over 1" at [illegible] places at inner edge, [illegible]
windings bent & waved on edge
packing torn & holed over [illegible]" x 4", at inner edge, all exposed
contents heavily [illegible]

3013-3 - [illegible] lbs
1 circumference strap broken
1 circumference envelope out of line & buckled, paper packing
exposed
on one side, packing torn & holed over [illegible]" x [illegible]" at inner edge,
exposed contents partly rust stained
on other side, packing torn & holed over [illegible]" at inner edge,
exposed contents [illegible] on edge
packing torn & holed over [illegible]" x [illegible]" at center,
exposed contents partly rust stained & dented on edge ..../.

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[illegible]

[illegible] holed over 1" [illegible]" at outer edge, exposed
[illegible] partly rust stained & heavily [illegible] on edge

[illegible]

[illegible] – [illegible]
[illegible] torn & holed [illegible]", contents exposed
packing [illegible] holed over [illegible]" at inner edge, [illegible]
[illegible]

[illegible] – [illegible]
[illegible] holed [illegible]" [illegible], exposed [illegible]
partly [illegible]

[illegible] – [illegible]
[illegible]
[illegible] at inner edge,
[illegible]
[illegible] torn [illegible] holed over [illegible]" at inner edge,
exposed [illegible] on edge

[illegible] – [illegible]
packing [illegible] all over in the [illegible]
packing [illegible] all over [illegible] circumference on one side

[illegible] – [illegible]
[illegible] envelope torn & holed, exposed winding partly
[illegible]
packing torn & holed 1" at inner edge, exposed contents
[illegible] on edge
packing torn & holed [illegible]" at outer edge, exposed contents
partly [illegible] at [illegible]

[illegible]

[illegible] – [illegible] lbs
outer envelope [illegible] & slightly buckled
one [illegible] envelope disturbed

3914-1 – 17.[illegible] lbs
[illegible] 120 x 120 cm, outer envelope slightly buckled,
[illegible] envelope disturbed & torn, contents exposed & [illegible],
exposed [illegible] partly rust stained
[illegible] inner layers damaged

[illegible]

[illegible] – [illegible]
packing torn & buckled all over, exposed contents [illegible],
inner layer [illegible]

3914-31 – 16.470 lbs
packing disturbed all over, paper & contents exposed
inner layer [illegible]
[illegible] x [illegible]

[illegible]

[illegible] – [illegible]
[illegible] envelope torn & holed 2" x [illegible]", outer [illegible]
[illegible]
packing [illegible] holed at inner [illegible], exposed contents partly
rust stained [illegible] on [illegible] .../.

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Firme MOUZON & Co S.A.

Suite No 6

[illegible]

[illegible] - 11.7[illegible]0 lbs
packing [illegible] torn at several places in the core
circumference envelope buckled
packing torn & holed over [illegible] circumference at inner edge, exposed
contents partly rust stained, waved & curled on edge

[illegible]

[illegible] - [illegible] lbs
evidence of salt contamination on the packing
circumference envelope cut on [illegible]
packing [illegible] all over in the core
on one side, packing torn & holed over [illegible]" at inner edge, inner
layer [illegible] on edge
on other side, packing torn & holed [illegible]"x [illegible]" at outer edge,
exposed contents partly rust stained
packing torn & holed [illegible]"x [illegible]" at center, exposed
contents partly rust stained

[illegible] - [illegible] lbs
evidence of salt contamination on the packing
packing [illegible] & torn all over in the core
on one side, packing torn & holed over [illegible]" at inner edge, inner
layer [illegible] on edge
on other side, packing torn & holed over [illegible]"x [illegible]" at inner edge,
exposed contents partly rust stained
packing torn & holed over 1" at center, exposed
contents partly rust stained & curled on edge

[illegible]

[illegible] - 17.[illegible] lbs
packing buckled all over in the core

3914-[illegible] - [illegible] lbs
packing buckled all over in the core
on one side, packing torn & holed [illegible]" at inner edge, exposed
contents partly rust stained
on other side, packing torn & holed [illegible]" at inner edge, exposed
contents partly rust stained

[illegible]

39[illegible] - [illegible] lbs
circumference envelope buckled over [illegible]
packing buckled all over in the core
on one side, packing torn & holed [illegible]" at inner edge, exposed
contents curled on edge
on other side, packing buckled all over at inner edge
packing torn & holed [illegible]"x [illegible]" at center, exposed
contents partly rust stained & curled on edge

39[illegible]-14 - [illegible] lbs
packing buckled all over in the core
on one side, packing torn & holed [illegible]" at inner edge, exposed
contents waved & curled on edge
packing buckled all over at inner edge
on other side, packing torn & holed [illegible]" at inner edge, exposed
contents partly rust stained

..../.

F.J.W. 4000-5-70

•3655
6/7[illegible]

m/s "[illegible]"

Wagon n° [illegible].87.39[illegible].731.8

3915-[illegible] - [illegible].990 lbs
on one side, packing torn & holed 4" x 3" at inner edge, exposed contents chafed on edge
on other side, packing torn & holed over 1ft at inner edge, [illegible] windings chafed on edge
packing torn & holed 3" x 3" at center, exposed contents partly rust stained

3913-34 - 21.630 lbs
packing buckled all over in the core
on one side, packing loose, torn & holed over 1sq.ft., exposed contents partly rust stained
on other side, packing torn & holed over 5" x [illegible]" & 3" at inner edge, exposed contents partly rust stained & chafed on edge

3913-[illegible] - [illegible].[illegible] lbs
packing buckled all over in the core
& circumference envelope buckled
on one side, packing torn & holed over 3" at inner edge, exposed contents partly rust stained, chafed & bent on edge
on other side, packing torn & holed 2" x 1" at inner edge, exposed contents bent on edge

3914-13 - 18.45[illegible] lbs
packing torn & holed 5" x 3", at inner edge, exposed contents partly rust stained, 1 winding chafed on edge

n° ? - 5 - 17.670 lbs
slightly ovalised
packing buckled all over in the core
packing torn & holed over 4" x 2" at outer edge, exposed contents partly rust stained & nicked on edge

Wagon n° [illegible].87.[illegible]7.[illegible]3[illegible]-1

3913-10 - [illegible].41[illegible] lbs
slightly ovalised
packing buckled in the core
on one side, packing torn & holed 3" at inner edges, exposed contents partly rust stained
on other side, packing torn & holed 2" at center, exposed contents partly rust stained

3913-12 - [illegible].3[illegible] lbs
slightly ovalised
1 circumference strap missing - circumference envelope & core packing buckled all over, paper wrapping exposed
on one side, packing torn & holed over [illegible]ft at inner edge, exposed contents partly rust stained & [illegible] windings chafed on edge
packing torn & holed 3" x 2" at outer edge, exposed contents partly rust stained & 1 winding chafed on edge
on other side, packing torn & holed over [illegible]ft at inner edge, exposed contents chafed, waved & dented on edge

Firme MOUZON & Co S.A.

[illegible]te No. 10

m/s "[illegible]"

[illegible] n° [illegible]

[illegible] - [illegible] - [illegible] lbs
packing buckled & torn all over in the core, inner layer exposed
on one side, packing torn & holed [illegible] over [illegible]" at inner
[illegible] contents scratched [illegible] chafed [illegible]
on other side, packing torn & holed [illegible] over [illegible]" at inner
edge, exposed contents chafed, [illegible] chafed on edge

[illegible] - [illegible] - [illegible] lbs
circumference envelope torn & holed over [illegible]", exposed contents
partly rust stained, [illegible]
circumference envelope torn [illegible] [illegible]" x [illegible]", contents exposed
on one side, packing torn & holed over [illegible] at inner edge,
contents [illegible]
on other side, packing torn & holed over [illegible]" at inner edge,
exposed contents partly rust stained, [illegible] chafed on edge

[illegible] n° [illegible]

[illegible] - [illegible] - [illegible] lbs
circumference envelope partly buckled
packing torn & holed [illegible]" x [illegible]" at inner edge, [illegible] binding bent on edge

[illegible] - [illegible] - [illegible] lbs
on one side, packing torn & holed over [illegible]" x [illegible]" at inner edge,
binding bent on edge
on other side, packing torn & holed over [illegible]" x [illegible]" at inner edge,
exposed contents partly rust stained & chafed on edge

[illegible] n° [illegible]

[illegible] - [illegible] - [illegible] lbs
packing torn over 1½ x t on one side, [illegible] wrapping exposed
on one side, packing torn & holed over [illegible]", [illegible]", [illegible]" at inner
edge, exposed contents partly rust stained, bent & chafed on [illegible]
on other side, packing torn & holed over [illegible]" at inner edge,
exposed contents chafed on edge

3513-37 - [illegible] lbs
evidence of salt contamination on the packing
packing buckled all over in the core, [illegible]
packing buckled over ½ circumference on one side, [illegible]
exposed
packing torn & holed [illegible]" at [illegible] places at inner edge, exposed contents partly rust stained, [illegible] bindings chafed on edge

[illegible] n° [illegible]

[illegible] - [illegible] - [illegible] lbs
evidence of salt contamination on the packing
on one side, packing buckled over ½ circumference, torn & holed
[illegible]" at inner edge, binding chafed on edge
on other side, packing torn & holed over ½ circumference at inner
edge, exposed contents partly rust stained, [illegible] chafed on edge

3511-14 - [illegible] lbs
packing torn & holed [illegible]" x [illegible]" in the core, contents exposed
on one side, packing torn & holed [illegible]" x [illegible]" at inner edge, exposed
contents [illegible] chafed on edge
on other side, packing torn & holed at [illegible] places over [illegible]" at inner
edge, exposed contents partly rust stained, [illegible] bindings bent [illegible]
chafed on edge

F.J.W. 4000-5-70

[illegible].3653
CH/Vc

m/s "[illegible]ULARLAND"

Wagon n° [illegible]1.87.3434.[illegible]-5

3314-[illegible] - [illegible] lbs
slightly ovalised
packing buckled all over in the core
on one side, packing torn & holed [illegible]" x 4" at inner edge, exposed
contents partly rust stained
on other side, packing torn & holed 10" x [illegible]" & 1" x 1" at inner edge,
exposed contents partly rust stained, waved & chafed on edge

3313-16 - [illegible].3[illegible]0 lbs
evidences of salt contamination on the packing
[illegible] circumference straps missing, circumference envelope disturbed,
paper wrapping exposed
on one side, packing torn & holed over [illegible] at inner edge, exposed
contents chafed on edge
packing torn & holed 1" at inner edge, exposed con-
tents partly rust stained & chafed on edge
packing torn & holed [illegible]" x [illegible]" at center, exposed con-
tents partly rust stained & chafed on edge
on other side, packing torn & holed at [illegible] places over 1ft at inner
edge, exposed contents partly rust stained, [illegible] windings waved &
dented on edge

Wagon n° [illegible]1.8[illegible].3[illegible]01.[illegible]-5

331[illegible]-30 - [illegible].760 lbs
circumference envelope buckled all over, paper wrapping exposed
& torn & holed [illegible]", contents exposed

331[illegible]-[illegible] - [illegible].170 lbs
slightly ovalised
packing buckled & partly missing in the core, paper wrapping expos[ed]
on one side, packing torn & holed 10" x [illegible]" at inner edge, exposed
contents partly rust stained & chafed on edge
on other side, packing torn over ½ circumference at inner edge,
condition of contents unknown

Wagon n° [illegible]

3314-3[illegible] - [illegible] lbs
on one side, packing torn & holed 4" x [illegible]" at inner edge, [illegible] windings
waved & chafed on edge
on other side, packing torn & holed 1" at inner edge, contents
exposed packing torn & holed [illegible]" x [illegible]" at center, exposed
contents chafed on edge

Wagon n° [illegible]1.8[illegible].3[illegible].71[illegible]-1

3315-3 - [illegible].7[illegible]0 lbs
on one side, packing torn & holed [illegible] at inner edge, exposed
contents partly rust stained & chafed on edge
on other side, packing torn & holed 1" x [illegible]" at center, exposed
contents partly rust stained & chafed on edge
packing torn & holed at inner edge, exposed windings
chafed on edge

3314-41 - [illegible].[illegible]90 lbs
on one side, packing torn & holed [illegible]" x [illegible]" at inner edge, exposed
contents waved & chafed on edge, 1 winding scratched over 1"

.../.

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Suite No. [illegible]

Firme MOUZON & Co S.A.

[illegible]

m/s "[illegible]"

on other side, packing torn & holed at [illegible] places [illegible]"x 1" at inner edge, exposed contents partly rust stained

[illegible] n° [illegible]. 7. [illegible]

3914[illegible] - 17.[illegible] lbs
packing buckled on one side in the core
on one side, packing torn & holed [illegible]" x [illegible]" at [illegible] places at inner edge, exposed contents partly rust stained, [illegible] windings [illegible] chafed on edge
on other side, packing torn & holed at [illegible] places over [illegible]" at inner edge, [illegible] windings waved & dented on edge

[illegible] - [illegible] lbs
packing buckled all over in the core, [illegible]
packing buckled on [illegible] over [illegible]
on one side, packing torn & holed [illegible]" at inner edge, 4 windings [illegible], [illegible] windings [illegible] on edge
on other side, packing torn & holed [illegible] at [illegible] on one side,
exposed contents partly rust stained
packing torn & holed [illegible]" at inner edge, 4 windings
waved & dented on edge

3915-5[illegible] - [illegible].500 lbs
on one side, packing torn & holed [illegible]" at inner edge, exposed contents partly rust stained, [illegible] winding [illegible] on edge
on other side, packing torn & holed [illegible]"x [illegible]" at inner edge, exposed contents partly rust stained, [illegible] on edge
packing torn & holed [illegible]" at center, exposed contents
partly rust stained & chafed on edge

391[illegible]-3[illegible] - [illegible] lbs
circumference envelope torn & holed [illegible] x [illegible]", exposed contents partly rust stained
packing buckled on one side in the core, exposed winding partly rust stained & scratched
on one side, packing torn & holed [illegible]"x [illegible]" at inner edge, 2 windings chafed on edge
on other side, packing torn & holed 6"x [illegible]" at inner edge, exposed contents partly rust stained, dented, waved & chafed on edge

3914-[illegible] - [illegible] lbs
circumference envelope torn & holed at [illegible] places over [illegible]", contents exposed
packing buckled all over in the core
on one side, packing buckled over [illegible], [illegible] wrapping exposed
packing torn & holed 7"x [illegible]" at inner edge, exposed
contents partly rust stained, [illegible] windings waved & chafed on edge
packing torn & holed [illegible]"x [illegible]" at inner edge, [illegible] windings
chafed on edge, [illegible] winding torn & cut on edge
packing torn 4"x [illegible]" at inner edge, 8 windings
buckled, torn & cut on edge
on other side, packing torn & holed over [illegible]" at inner edge,
exposed contents partly rust stained, [illegible] windings telescoped, [illegible] 4"
waved & dented on edge
packing torn & holed [illegible]" at outer edge, exposed
windings chafed on edge

..../.

F.J.W. 4000-5-70

[illegible]

m/s "POLARLAND"

Wagon n° 31.87.3305.73[illegible]

3914-37 - [illegible] lbs
circumference envelope torn & holed over [illegible]" at 2 places, contents exposed
on one side, packing torn & holed 4" x [illegible]" at center, exposed contents partly rust stained & chafed on edge
packing torn & holed 3" at inner edge, exposed contents chafed on edge
on other side, packing torn & holed 4" at inner edge, exposed contents partly rust stained & chafed on edge

3915-[illegible] - [illegible] lbs
packing torn & holed over 1½ ft in the core
on one side, packing torn & holed 1" x 1" at inner edge, exposed contents partly rust stained & chafed on edge
packing torn & holed 3" x 3" at center, exposed contents partly rust stained & chafed on edge
packing torn & holed 7" x [illegible]" [illegible]" x 2" at outer edge, exposed contents partly rust stained & chafed on edge
on other side, packing torn & holed 1" x 3" at outer edge, 1 winding chafed on edge

3914-[illegible] - [illegible] lbs
packing scratched on one side over 1½ft, exposed contents chafed on edge
packing torn & holed at 2 places 2" x 1" at inner edge, exposed contents partly rust stained
packing torn & holed 1" at center, exposed contents partly rust stained

Wagon n° [illegible]7.[illegible].78[illegible]

3915-7 - [illegible] lbs
[illegible] circumference straps broken
½ circumference envelope loose, out of line 5", torn & holed 1", paper exposed
packing torn & holed 1" at inner edge, exposed contents partly rust stained, [illegible] windings waved on edge

3914-35 - [illegible] lbs
evidence of salt contamination on the packing
½ circumference envelope out of line & buckled
packing torn & holed 1" at inner edge, contents exposed
packing torn & holed 1½ & 3" x 1" at center, exposed contents partly rust stained & chafed on edge

Wagon n° [illegible]

391[illegible] - [illegible] lbs
evidence of salt contamination on the packing
on one side, packing torn & holed 1" at inner edge, exposed contents partly rust stained, waved & scored on edge
on other side, packing torn & holed [illegible]" at inner edge, exposed contents partly rust stained, waved & scored on edge

m/s "[illegible]"

[illegible] - [illegible]70 lbs
on one side, packing torn & holed 1" at inner edge, [illegible] windings
[illegible] on [illegible]
on other side, packing torn & holed [illegible]"

[illegible]

[illegible]-77 - [illegible] lbs
[illegible] circumference straps broken
circumference envelope loose [illegible], [illegible] exposed
packing [illegible] inner edge, [illegible] contents partly
[illegible]

[illegible] - [illegible] lbs
[illegible], exposed
[illegible]
[illegible]
[illegible], exposed
[illegible]

[illegible]

[illegible] - [illegible] lbs -
packing generally buckled & torn on [illegible], exposed
on one [illegible] torn & holed [illegible]
contents partly [illegible]
on other side, packing [illegible] holed [illegible]" t
[illegible], exposed contents partly [illegible] on [illegible]
[illegible] torn & holed over [illegible] inner edge,
[illegible] windings torn & heavily [illegible]

[illegible] - [illegible] lbs
packing out of line, buckled, torn & holed [illegible]" in the core
on one side, packing generally [illegible] on [illegible]
on other side, packing torn & holed over [illegible]" [illegible], exposed
contents [illegible] on edge
[illegible] torn & holed over [illegible]" [illegible] inner [illegible], inner
layer [illegible] on [illegible]

[illegible]

[illegible] - [illegible] lbs
packing torn & holed [illegible]"x[illegible]" at outer edge, exposed contents
partly [illegible], [illegible] on [illegible]

[illegible] - [illegible] lbs
packing buckled all over in the core
on one side, packing torn & holed over [illegible] at inner
edge, exposed contents partly [illegible]
[illegible] packing torn & holed at outer [illegible], exposed [illegible]
partly [illegible] & torn
on other side, packing torn & holed over [illegible] at inner
edge, exposed contents partly [illegible]
[illegible] packing torn over [illegible]
exposed [illegible] packing torn & holed over [illegible] outer edge,
exposed contents partly [illegible]

..../.

[illegible]
[illegible]

m/s "[illegible]"

Wagon n° 21.83.3300.165.2

3915-26 - [illegible].120 lbs
on one side, packing torn & holed 6" x 1" at outer edge,
[illegible] windings torn & chafed on edge
packing torn & holed 1" at inner edge, 1 winding
chafed on edge
on other side, packing torn & holed 6" at inner edge, exposed
windings waved on edge

3915-10 - [illegible] lbs
outer envelope cut & disturbed
side packing torn & holed over [illegible]" at inner edge, exposed
contents chafed on edge

Wagon n° [illegible]

3915-30 - [illegible].210 lbs
on one side, packing torn & holed 1" at center, exposed contents
partly rust stained & chafed on edge
packing torn & holed [illegible]" x [illegible]" & [illegible]" at inner edge,
[illegible] windings waved & bent on edge
on other side, packing torn & holed [illegible]" x [illegible]", at inner edge, exposed
contents waved & bent on edge

3914-11 - [illegible] lbs
inner envelope disturbed & buckled, side envelope torn, inner
layers exposed & chafed on edge

Wagon n° [illegible]

3915-9 - [illegible] lbs
inner packing disturbed, contents exposed, inner layer chafed &
deeply scratched, outer envelope slightly buckled, both side
envelopes cut at [illegible] places, contents exposed

3913-30 - [illegible].270 lbs
outer envelope buckled & torn, contents exposed, inner envelope
disturbed, contents exposed
on one side, packing torn & holed [illegible]" x [illegible]" at inner edge, exposed
contents partly rust stained & waved on edge
on other side, packing torn & holed over 1ft at inner edge,
exposed contents waved & chafed on edge

Wagon n° 1.87.[illegible]

3915-[illegible] - [illegible] lbs
packing disturbed & torn all over, exposed windings dented &
chafed on edges

Stacked under covered [illegible] at berth n° 4[illegible]4

3914-7 - [illegible] lbs
ovalised [illegible] x [illegible] mm
packing &/or contents damaged at several places

3911-9 - 17.[illegible] lbs
ovalised [illegible] x [illegible] mm
packing &/or contents damaged at several places

.../.

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[illegible] - [illegible]
[illegible] contents damaged at several places

[illegible] - [illegible]
[illegible] contents damaged at several places

[illegible] - [illegible]
[illegible] at several places

[illegible] - [illegible]
[illegible] at several places

[illegible] - [illegible] coil [illegible] steel [illegible] - [illegible]

[illegible] - [illegible]
[illegible] on the [illegible]
[illegible] holed "x" at inner edge, exposed
[illegible], several [illegible] on [illegible]
contents rust [illegible] torn holed "x" at inner edge, exposed
contents [illegible] heavily [illegible] over "
[illegible] on [illegible]

[illegible] - [illegible]
[illegible] slightly [illegible] on sides
[illegible] over [illegible] exposed contents
partly rust stained [illegible] scratched on [illegible]

[illegible] - [illegible]
[illegible] out of line in the core
[illegible] torn at inner edge, holed "x", exposed
contents partly rust stained [illegible] on [illegible]

[illegible] - [illegible]
on [illegible] torn holed at [illegible] places over " at inner
[illegible] on [illegible]
on other [illegible] torn holed at [illegible] places over " at outer
edge, [illegible]
[illegible] torn holed over [illegible] at inner [illegible]
[illegible] scratched on edge, 1 winding
scratched over "

[illegible] - [illegible]
on [illegible] torn holed "x", "x" at inner edge
[illegible] exposed [illegible] partly rust stained, [illegible]
on [illegible] torn holed "x" at inner edge, exposed
contents partly rust stained

..../.

F.J.W. 4000-5-70

[illegible]

[illegible]

s/s "[illegible]"

Wagon n° 1.[illegible].1150.0[illegible]-3

3[illegible]-[illegible] - [illegible].870 lbs
packing out of line 5" & buckled in the core
on one side, packing torn & holed [illegible]"x [illegible]" at inner edge, exposed
contents partly rust stained & chafed on edge
packing torn & holed [illegible]"x 1" at center, exposed
contents partly rust stained & chafed on edge
on other side, packing torn & holed [illegible]"x [illegible]" at inner edge, exposed
contents partly rust stained & heavily dented on edge

[illegible]-[illegible] - [illegible].[illegible] lbs
packing buckled & torn on one side in the core, exposed contents
partly rust stained
on one side, packing torn & holed [illegible]"x [illegible]" at inner edge, exposed
contents partly rust stained, [illegible] winding scratched [illegible]"
packing torn & holed [illegible]" at inner edge, [illegible] windings
bent on edge
on other side, packing torn & holed [illegible]"x [illegible]" at inner edge,
exposed contents partly rust stained, [illegible] windings waved, bent &
chafed on edge packing torn & holed [illegible]"x [illegible]" at inner edge,
exposed contents partly rust stained, [illegible] winding waved on edge
packing torn & holed [illegible]"x [illegible]" at inner edge,
18 windings heavily dented & waved on edge

Wagon n° 1.[illegible].[illegible]

3[illegible]-17 - [illegible].[illegible] lbs
circumference envelope torn & holed [illegible]", contents exposed
packing [illegible] in the length in the core
on one side, packing torn & holed [illegible]"x [illegible]" at inner edge, exposed
contents partly rust stained, [illegible] windings waved on edge
on other side, packing torn & holed [illegible]x [illegible]", [illegible]"x [illegible]" & 5"x [illegible]" at
inner edge, exposed contents partly rust stained, 4 windings
waved on edge

3[illegible]-16 - 15.[illegible]90 lbs
on one side, packing torn & holed 1[illegible]" at inner edge, 2 windings
bent on edge
on other side, packing torn & holed [illegible]"x [illegible]" at inner edge, 2
windings waved on edge

Wagon n° 1.[illegible].[illegible].[illegible]-6

3[illegible]-17 - 17.[illegible] lbs
packing torn & holed [illegible]"x [illegible]" at center, exposed contents partly
rust stained & chafed on edge
packing torn & holed [illegible]" at inner edge, exposed contents partly
rust stained

3[illegible]-1[illegible] - [illegible].7[illegible] lbs
packing buckled on one side in the core
circumference envelope torn & holed [illegible]"x [illegible]" & [illegible]"x [illegible]", exposed
contents partly rust stained & scratched
on one side, packing torn & holed [illegible]"x [illegible]" & [illegible]"x [illegible]", exposed contents partly rust stained, 1 winding scratched over [illegible]"
on other side, packing torn & holed 1"x [illegible]" at inner edge, exposed contents partly rust stained & waved on edge

.../.

[illegible]

c/o [illegible]

[illegible]

[illegible] – [illegible] lbs
on one side, packing torn & holed [illegible]"x 1" & [illegible]"x [illegible]" at inner edge,
exposed contents partly rust stained
on other side, packing torn & holed [illegible]"x 1" at outer edge,
exposed contents partly rust stained

[illegible] – [illegible] lbs
packing buckled all over in the core, contents exposed
on one side, [illegible] circumference envelope [illegible]
[illegible], exposed contents partly rust stained & [illegible]
[illegible]
[illegible] torn & holed [illegible]"x [illegible]" at inner edge, ex[illegible]
[illegible]
on other side, packing torn & holed [illegible]"x [illegible]" & [illegible]"x 1" at inner
edge, exposed contents partly rust stained, [illegible]
on edge

[illegible]

[illegible] – [illegible] lbs
packing torn & holed over [illegible] at inner edge, exposed contents
partly rust stained & chafed on edge

3[illegible] – [illegible].7[illegible] lbs
circumference envelope torn & holed [illegible]"x [illegible]" at [illegible], paper
wrapping exposed
packing buckled all over in the core, exposed winding partly
x rust stained & scratched
on other side, packing torn & holed [illegible]"x [illegible]" at inner edge, [illegible]
[illegible] edge
packing torn & holed [illegible]"x [illegible]" at inner [illegible], exposed
contents partly rust stained, [illegible]"
[illegible], [illegible] on edge
x on one side, packing torn & holed [illegible]"x [illegible]" at inner edge, exposed
contents partly rust stained & chafed on [illegible]

[illegible]

[illegible]-4 – 1[illegible] lbs
packing buckled all over in the core, contents exposed
packing torn & holed at [illegible] places over [illegible]" [illegible] inner edge, exposed
contents partly rust stained, [illegible] on [illegible]

[illegible] – [illegible] lbs
packing buckled over ½ circumference on [illegible]
packing buckled in the core
on one side, packing torn & holed ½" at inner edge, exposed
contents [illegible] on edge
[illegible] torn & holed [illegible]"x [illegible]" [illegible] 1" at outer edge,
exposed contents partly rust stained, [illegible]
edge
on other side, packing torn & holed at inner edge, exposed
contents [illegible] & chafed on edge

[illegible]

[illegible] – [illegible] lbs
[illegible] circumference strap broken
½ circumference envelope buckled, paper wrapping exposed
.../.

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Suite No 1

[illegible] on one side [illegible] inner edge, [illegible]

[illegible]

[illegible] all over in the core, [illegible] contents [illegible]

[illegible] inner edge, [illegible]

[illegible] envelope [illegible]

[illegible] all over in the core, [illegible]

[illegible] ..../.

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[illegible]
m/s "[illegible]"

Wagon nº [illegible]

[illegible] - [illegible] lbs
evidence of salt contamination on the packing
packing buckled all over & scratched in the core
packing torn & buckled [illegible] on one side, paper wrapping
exposed
on one side, packing torn & holed [illegible]"x[illegible]" at outer edge, exposed
contents partly rust stained - packing torn & holed [illegible]"x[illegible]"
[illegible]"x[illegible]" at inner edge, exposed contents partly rust stained
waved on edge, [illegible] packing torn [illegible]
on other side, packing torn & holed [illegible] at [illegible] edge,
exposed contents partly rust stained, [illegible] waved on edge

[illegible] - [illegible] lbs
packing torn & holed at [illegible] places [illegible]"x[illegible]" at inner edge, exposed
contents partly rust stained, [illegible]

Wagon nº [illegible]

[illegible] - [illegible] lbs
on one side, packing torn & holed [illegible] at [illegible], exposed contents
[illegible] - packing torn & holed [illegible]"x[illegible]" at inner edge,
exposed contents partly rust stained [illegible] edge
on other side, packing torn & holed [illegible]" at inner edge, exposed
contents partly rust stained [illegible] waved on edge

[illegible] - [illegible] lbs
packing out of line [illegible]" in the core
on both sides, packing buckled on inner edges

Wagon nº [illegible]

[illegible] - [illegible] lbs
packing buckled all over in the core, contents exposed
on one side, packing torn & holed [illegible]"x[illegible]" at inner edge,
exposed contents partly rust stained, [illegible] on edge
on other side, packing buckled all over at inner edge, [illegible]
holed 1"x [illegible]", exposed contents partly rust stained, [illegible]
waved on edge

[illegible]-7 - [illegible].5[illegible] lbs
packing buckled & scratched [illegible] in the core, exposed contents
partly rust stained & scratched on edge
circumference envelope buckled over [illegible]
on one side, packing torn & holed at inner edge, exposed contents chafed on edge
on other side, packing buckled, torn & holed [illegible] at outer edge,
exposed contents partly rust stained - packing torn & holed [illegible]
at inner edge, exposed contents partly rust stained, [illegible]
waved on edge

Wagon nº [illegible].7.[illegible]

[illegible]-8 - [illegible].5[illegible] lbs
packing buckled over ½ circumference on one side, paper wrapping
exposed
packing buckled all over in the core, exposed contents partly
rust stained & scratched over [illegible]"
on one side, packing torn & holed [illegible]"x[illegible]", [illegible]"x[illegible]" & [illegible]"x[illegible]" at
inner edge, exposed contents partly rust stained, waved
chafed on edge

.../.

m/s "[illegible]"

on other side, packing torn & holed 3" x 2" & 4" x 3" at outer
edge, exposed contents partly rust stained, 8 windings slightly
chafed on edge - packing torn & holed 4" x 3" & 4" x 3" at center,
exposed contents partly rust stained & chafed on edge - packing
torn & holed 1ft x 3" & 3" x 2" at inner edge, exposed contents
chafed on edge

3908-15 - [illegible].610 lbs
packing buckled & holed on one side in the core, exposed contents
partly rust stained
packing torn & holed in the core, exposed contents partly bent
on one side, packing torn & holed 1" at inner edge, exposed
contents partly rust stained & chafed on edge
on other side, packing torn & holed on one side, exposed con-
tents partly rust stained, several windings bent & chafed on
edge, & outer windings cut ½" on edge

3908-16 - [illegible].710 lbs
packing buckled all over on both inner edges
packing torn & holed 2" x 2" at inner edge, exposed contents
partly rust stained & waved on edge
packing torn & holed on one side in the core, exposed contents
partly rust stained

3909-10 - 17.720 lbs
slightly ovalized
packing out of line & buckled over 1ft in the core
packing torn & holed 10" x 1" at outer edge, exposed
on one side, packing torn & holed 1" at inner
contents partly rust stained - packing torn & holed 1" at inner
edge, exposed contents partly rust stained & bent on edge
on other side, packing torn & holed 2" x 2" & 1" at center, ex-
posed contents partly rust stained & chafed on edge - packing
torn & holed all over in the core, exposed winding torn & cut 2"
on edge

3908-30 - 15.330 lbs
on one side, packing torn & holed 1" at inner edge, contents
exposed
on other side, packing torn & holed 2" x 2" at inner edge,
exposed contents partly rust stained, waved & chafed on edge

Reçu n° [illegible]

3909-[illegible] - 17.[illegible] lbs
on one side, packing torn & holed 3" x 1", 1" & 1" at inner edge,
exposed contents partly rust stained
on other side, packing torn & holed 1" x 1" at inner edge, ex-
posed contents chafed on edge - packing torn & holed 5" x [illegible]" at
inner edge, exposed contents heavily dented, bent & waved on edge
packing torn & holed over 1ft, paper wrapping exposed - packing
torn & holed 1" at outer edge, paper wrapping exposed

3908-17 - [illegible].610 lbs
packing torn & holed over 1ft x 10" in the core, contents exposed
circumference envelope torn & holed 3" x [illegible]", outer winding partly
rust stained & scratched
packing torn & holed [illegible]" x [illegible]", [illegible]" x [illegible]", 1" x 1" at inner edge, ex-
posed contents partly rust stained & chafed on edge, 3 windings
waved & 3 windings bent & cut on edge

.../.

[illegible]

p[illegible] torn [illegible] holed [illegible] centre, exposed contents partly [illegible]

[illegible] holed [illegible]" x [illegible]" at outer e[illegible], exposed contents [illegible] dented [illegible]

[illegible]

[illegible] con[illegible]

[illegible]" x [illegible]" [illegible]

[illegible] holed [illegible] centre, [illegible]

[illegible] torn, outer l[illegible]

[illegible] [illegible], inn[illegible]

[illegible]

[illegible] - [illegible] lbs
[illegible] envelope [illegible], outer layer slightly dented on ed[illegible]
[illegible] in the core
[illegible] envelope torn [illegible]" x 7", [illegible] inner windings deeply indented on [illegible]

[illegible]

[illegible] - [illegible] lbs
[illegible] buckled in the co[illegible], inner layers pi[illegible]
torn on [illegible]
on one side, p[illegible] torn at inner ed[illegible]
on other side, packing torn all over, [illegible] inner layers bent on ed[illegible]

[illegible]-13 - [illegible] lbs
packing [illegible] cut in the core
on both sides, [illegible] at inner ed[illegible]
on one side, packing torn at inner edge, inner layers dented on edge over [illegible]" inter

[illegible] 7. [illegible]

[illegible] - [illegible] lbs
[illegible] envelope partly buckled [illegible] torn at [illegible] places
packing [illegible] torn in the core, inner layer exposed & dented on edge
on both sides, packing buckled & torn, [illegible] inner windings bent & dented on edge

[illegible]-14 - [illegible] lbs
[illegible] envelope & core packing buckled
on both sides, [illegible] torn at inner edge, [illegible] windings [illegible] on edge

[illegible]

[illegible] - [illegible] lbs
[illegible] envelope out of line
[illegible] torn in the core

.../.

on both sides, packing torn at inner edges, exposed windings chafed & dented on edge
on one side, packing torn over 4" x [illegible]", [illegible]" x [illegible]", exposed windings chafed & dented on edge

3908-[illegible] - 17.750 lbs
circumference envelope out of line & buckled on edges
packing disturbed in the core and partly missing
on one side, packing dented and slightly torn at inner edge
on other side, packing torn, exposed windings chafed & dented on edge

Wagon n° [illegible]-4

390[illegible]-1[illegible] - [illegible].570 lbs
circumference envelope buckled
packing torn & disturbed in the core
on one side, packing disturbed & slightly torn
on other side, packing partly missing, exposed contents chafed & dented at [illegible] places on edge

3908-1 - [illegible].590 lbs
circumference envelope bent & torn on edge over 1[illegible]" x 10",
exposed layer torn
packing buckled & torn in the core
on both sides, packing torn, exposed windings chafed on edges,
inner layer dented & scratched

Wagon n° [illegible]-4

3908-11 - [illegible].740 lbs
circumference envelope and core packing partly buckled
on both sides, packing torn at inner edges, exposed layers chafed & dented on edges

Wagon n° [illegible]-2

3909-7 - [illegible].[illegible]40 lbs
circumference envelope torn [illegible]" x 7", outer layers chafed
packing disturbed, buckled & torn in the core, inner layer chafed & dented all over
on one side, packing torn at inner edge
on other side, packing torn all over, exposed windings chafed & dented on edge

3908-9 - [illegible].770 lbs
○ circumference envelope buckled & torn [illegible]" x [illegible]"
packing disturbed & torn on edges in the core
on one side, packing torn at inner edge
on other side, packing torn over 7" x 7" at inner edge, exposed windings chafed & dented on edge

Wagon n° [illegible]-2

3909-4 - [illegible].[illegible]0 lbs
on one side, packing torn & holed at [illegible] places over 1" at inner edge, exposed contents partly rust stained & chafed on edge - packing torn & holed 5" x [illegible]" at outer edge, exposed contents partly rust stained, [illegible] windings waved, dented & chafed on edge,
1 winding torn & cut over [illegible]" on edge

.../.

[illegible]

m/s "[illegible]"

on other side, packing torn & holed over 11" x 10", exposed contents partly rust stained, waved & dented on edge

3909-1[illegible] - 1[illegible] lbs
circumference envelope buckled & torn, outer layer chafed
packing buckled & torn on both sides in the core, 7 inner windings bent & dented on edge

Wagon n°[illegible].034-4

3909-[illegible] - 17.[illegible] lbs
circumference envelope & core packing disturbed
on both sides, packing buckled & torn, 10 inner windings waved, bent & dented on edges

[illegible]-13 - 1[illegible].1[illegible] lbs
inner envelope disturbed & torn, side envelope torn & cut,
inner layer dented & cut, exposed windings chafed & cut on edges

stored under covered shed at berth n°4[illegible]4

3909- - [illegible]0 lbs
ovalised [illegible] x 670 mm
packing &/or contents damaged at several places

3909-6 - 18.750 lbs
ovalised [illegible] x [illegible] mm
packing &/or contents damaged at several places

3909-7 - [illegible].350 lbs
ovalised [illegible] x [illegible] mm
packing &/or contents damaged at several places

3909-[illegible] - [illegible].5[illegible]0 lbs
ovalised [illegible]00 x [illegible]90 mm
packing &/or contents damaged at several places

3909-14 - 18.[illegible]90 lbs
ovalised 700 x [illegible]00 mm
packing &/or contents damaged at several places

B/L 3 - 1[illegible]3 coils cold rolled steel sheets - 1.07[illegible]

Wagon n°[illegible].87.[illegible]1.113-7

3910-[illegible] - [illegible].5[illegible] lbs
outer & core envelope slightly torn, outer & inner layers slightly scratched
both sides envelope slightly torn, exposed edges slightly chafed

3910-5 - [illegible].43[illegible] lbs
outer envelope torn, outer layer chafed
inner envelope buckled & dented
both sides envelope torn at inner edges, exposed windings edges chafed

3910-6 - 18.01[illegible] lbs
outer envelope set in at one place, core envelope buckled
one side envelope badly torn, all exposed windings edges badly dented